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United Supreme Court of the  
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JAMES H. McKENNEY,  
Clerk.

Supreme Court of the United States,

Brief of *Reige* for *D. C.*  
OCTOBER TERM, 1899.  
No. 439.

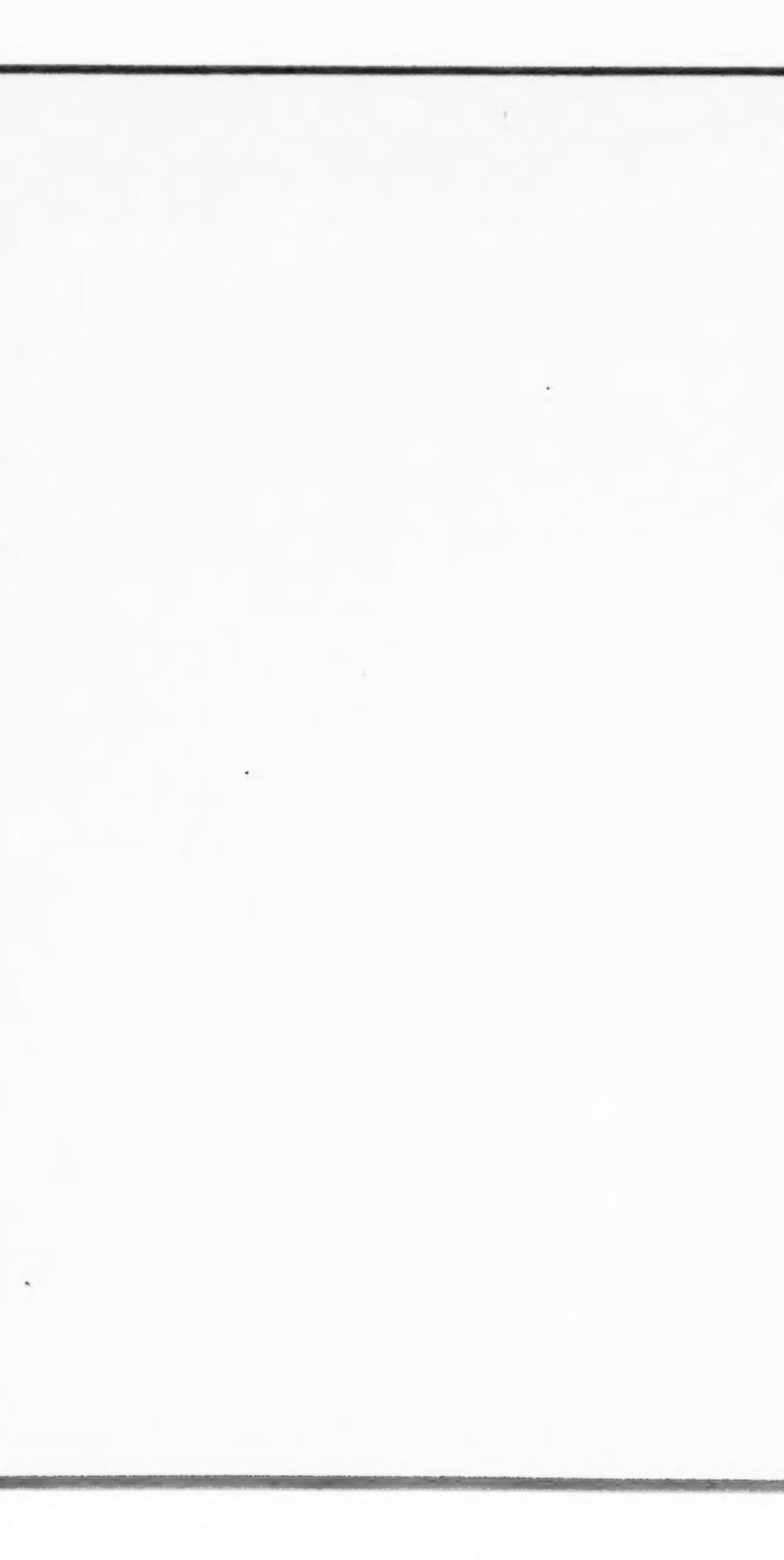
THE ADIRONDACK COMPANY  
*Filed January Plaintiff in Error,*  
*against*

THE PEOPLE OF THE STATE OF  
NEW YORK.

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BRIEF FOR THE PEOPLE OF THE  
STATE OF NEW YORK.

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# Supreme Court of the United States.

THE ADIRONDACK RAILWAY COM-

PANY,

Plaintiff in Error,

*against*

THE PEOPLE OF THE STATE OF

NEW YORK.

## BRIEF FOR THE PEOPLE OF THE STATE OF NEW YORK.

### ABSTRACT OR STATEMENT OF THE CASE.

#### **FIRST HEAD: The writ of error and appeals.**

The writ of error brings up a judgment of the Court of Appeals of New York affirming a final judgment of the Supreme Court of New York, which perpetually enjoined the plaintiff in error from taking certain lands by condemnation proceedings.

The plaintiff in error had begun condemnation proceedings to take part of Township 15, T. & C., in New York.

The People of the State of New York brought this action to perpetually enjoin those proceedings.

At the Special Term of the Supreme Court they had such a judgment.

Upon appeal by the plaintiff to the Appellate Division

of the Supreme Court the judgment was reversed and a new trial ordered (39 App. Div., 34; R. 74).

Upon appeal by the People of the State of New York to the Court of Appeals of New York, that order was reversed and the judgment affirmed (160 N. Y., 225; R. 93).

The plaintiff in error thereupon sued out the present writ.

**SECOND HEAD : Facts down to the decision of the Appellate Division of the Supreme Court of New York in Adirondack Railway Company vs. Indian River Company, 27 App. Div., 326.** (Opinions attached to this brief.)

On the 6th of August, 1897, the Forest Preserve Board passed a resolution in the following words :

“ *Resolved*, That we accept the offer of Mr. Mc-Echron and the other owners of about 18,000 acres of Township 32, T. & C., and 24,000 acres of Township 15 of the same purchase, including in this total acreage 8,000 acres, more or less, of the virgin forest land, the major portion of the balance of said townships being well wooded but lumbered of the soft timber, for the sum of \$149,000.

“ The above offer to include, and carry with it, Indian Lake (subject to the right of the grantors to control the waters thereof so long as they maintain the structures at the outlet), and the improvements and structures at the outlet thereof both existing and in course of construction, and the grubbing, acquiring and clearing of the shores thereof, which shall hereafter be conducted in accordance with the

" plans and specifications to be furnished by the State  
" engineer and surveyor.

" If the cost of such structures, improvements,  
" acquiring and grubbing and clearing up the shores  
" of said lake under the plans and specifications of  
" the State engineer be in excess of \$50,000, such  
" excess shall be added to said purchase price; and if  
" less than \$50,000, the difference shall be deducted  
" therefrom."

(Admitted—Answer, R. 5, 31.)

" Township 15, T. & C.," is within the "forest pre-  
" serve" as the same had been established by law at the  
adoption of the provision of the Constitution presently to  
be quoted (*post*, p. 10) and it is also within the "Adiron-  
dack Park." (Answer, R. 31).

Directly after the acceptance of the offer of McEchron  
and others by the above resolution, the People of the  
State of New York took possession of the land, sending a  
surveyor's force to survey for a dam at the mouth of  
Indian Lake, with a view to store the water for the use of  
the Champlain Canal and for water power on the Hudson  
River (R. 57-58).

This was as early as the eighteenth of August (R. 58).

The survey completed, the State Engineer prepared  
plans and specifications for the construction of the dam,  
"right after" the survey (R. 58), and the construction of  
the dam was immediately begun (R. 59), and it is to cost  
sixty-five thousand dollars (R. 59).

On the eighteenth of September the Adirondack Rail-  
way Company filed in the counties of Hamilton, Warren  
and Essex, in all of which counties Township fifteen is, a  
map and survey for the extension of its railroad across  
Township fifteen, and, of course, across the lands which

the Forest Preserve Board had agreed to purchase from McEchron and others, as above stated (R. 32).

On the first of October McEchron and the others were about to convey to the State Township fifteen and the eighteen thousand acres of thirty-two, and to receive their money, when they were stopped by the injunction printed at page 8 of the Record.

They thereupon did this: they put up the deed in escrow, to be delivered when the injunction was dissolved. They made and delivered another deed—*excepting* the land described in the railroad survey—and delivered it, and the People of the State of New York paid them ninety-nine thousand dollars, the Forest Preserve Board agreeing to pay the remaining sixty-five thousand dollars by paying for the dam, which, it will be remembered, was a provision of the original contract of the sixth of August (R. 6, 59, 52, 53).

This was the *first* of October.

On the *seventh* of October the Forest Preserve Board met again, and it having been reported to the Board that Mr. Justice McLaughlin, of the Supreme Court of New York, who had made the injunction, had declined to vacate it, the Forest Preserve Board took the strip of land described in the railway map, by the right of eminent domain, under chapter two hundred and twenty of the laws of eighteen hundred and ninety-seven (R. 48, 51; the law is printed, *post*, p. 31).

This appropriation was made by the service upon Mr. McEchron, the president of the Indian River Company, of the paper, a copy of which is Exhibit 12 (R. 50). This service was made in the presence of the members of the Forest Preserve Board. Mr. Allds testifies that it was made at ten minutes before noon. Mr. Ashley and Mr. McEchron testify that it was made later. Mr. Ashley and Mr. McEchron had before this received their ninety-nine

thousand dollars, and the People of the State of New York were paying for the dam.

On the same day the Adirondack Railway Company began condemnation proceedings in the three counties to take the strip across, or rather twisting around through Township fifteen.

As the decision of the trial judge is in the short form, and the reversal by the Appellate Division was not on the fact, all facts are found in our favor.

Amherst College *vs.* Ritch, 151 N. Y., 282, 320.

The facts then are these:

1. At ten minutes before noon the condemnation proceedings of the People of the State of New York were begun and completed—the title vesting at once.
2. At and after noon, and, of course, after the condemnation proceedings of the People of the State of New York were ended, the three condemnation proceedings of the plaintiff in error were begun, *lis pendens* was filed in all three proceedings, and service of the petitions made.

The injunction having been continued by the Special Term (R. 25), counsel for the State was permitted to take and argue an appeal, although even then, Mr. Ashley stipulated the appeal over the November Term (R. 33, 30).

The appeal resulted in a reversal of the order continuing the injunction (27 App. Div., 326).

(See the opinion of the Appellate Division, speaking by Mr. Justice Herrick, attached to this brief.)

This was the second of March (R. 60).

**THIRD HEAD: Facts since the decision of the Appellate Division of the Supreme Court of New York in Adirondack Railway Company v. Indian River Company, 27 App. Div. 326.**

The original deed in escrow was then delivered and recorded (R. 53).

Meanwhile, the condemnation proceedings stood to be heard at Plattsburgh on the twelfth of March—a fact of which it is quite apparent that nobody on the part of the State knew anything. Mr. Ashley testifies, that since the decision of the Appellate Division he understood that there was nothing further to be done on his part (R. 67).

The way he carried out this understanding that there “was nothing further to be done on his part” was this: He went to Plattsburgh on the twelfth of March; appeared in the proceedings for not only his own clients, but Judge Brown’s, consented to the appointment of a referee, an immediate hearing and an immediate judgment (R. 62, 66, 68), which by the regular process would have taken about a month at least.

Learning of this by accident, the proceedings under the judgment were stopped by the injunction in this action.

**FOURTH HEAD: The Adirondack Railway Company.**

The Adirondack Company was incorporated 29th October, 1863 (R. 71), under the General Railroad Act of New York (Chapter 140, Laws 1850), and Chapter 236 of the Laws of New Ycrk of 1863 (printed *post*, p. 14).

It constructed the railroad at present owned and operated by the plaintiff in error, extending from Saratoga Springs

to North Creek. In an action to foreclose a mortgage which it had made, its railroad was sold, and on the seventh day of July, 1882, the purchasers organized the plaintiff in error with a life of one thousand years (R. 72). This was done under Chapter 469 of the Laws of New York of 1873; Chapter 430 of the Laws of New York of 1874, and Chapter 446 of the Laws of New York of 1876 (printed, *post*, pp. 20-23).

On the ninth of May, 1892, "the Board of Railroad Commissioners of New York," *upon the application of the plaintiff in error*, "issued its certificate certifying "that in its opinion the public interests, under all the cir- "cumstances, did not require the extension of the road of "the Adirondack Railway Company beyond the portion "thereof constructed at the time the said company ac- "quired title to said railroad property and franchises, "namely, beyond North Creek, in the county of Warren "(R. 19; in evidence, R. 72).

This certificate was made under Section 83 of the Railroad Law of New York (R. 19; in evidence, R. 72). That section is printed (*post*, p. 29).

#### **FIFTH HEAD : Decisions below.**

The Special Term of the Supreme Court of New York gave judgment for the People, perpetually enjoining the Adirondack Railway Company from taking the land.

The Appellate Division of the Supreme Court of New York reversed this judgment and ordered a new trial upon

the ground that *by the filing of its map on the eighteenth of September the railway company had impressed upon the land a lien, good against the State* (R.76). Upon appeal by the People of the State of New York the Court of Appeals of New York reversed the order of the Appellate Division and affirmed the judgment.

## SIXTH HEAD : Laws.

### I. THE CONSTITUTION OF THE UNITED STATES—

#### “ARTICLE I.

“ SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make anything but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

“ No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

“ No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

“ARTICLE IV.

“SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

“SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states.

“A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

“No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.”

*Amendments.*

“(ARTICLE V.)

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

**"ARTICLE XIV.**

"(Proposed by Congress, June 16, 1866; ratification  
"announced by secretary of state, July 25, 1868.)

"SECTION 1. All persons born or naturalised in the  
"United States, and subject to the jurisdiction thereof,  
"are citizens of the United States and of the state wherein  
"they reside. No state shall make or enforce any law  
"which shall abridge the privileges or immunities of citi-  
"zens of the United States; nor shall any state deprive  
"any person of life, liberty, or property without due  
"process of law, nor deny to any person within its juris-  
"diction the equal protection of the laws."

"§ 5. The congress shall have power to enforce, by  
"appropriate legislation, the provisions of this article."

**II. The CONSTITUTION OF NEW YORK—**

Section seven of Article seven is as follows:

"*The lands of the State, now owned or hereafter ac-  
quired, constituting the forest preserve as now fixed by  
law, shall be forever kept as wild forest lands. They  
shall not be leased, sold or exchanged, or be taken by  
ANY corporation, public or private, nor shall the timber  
thereon be sold, removed or destroyed.*"

Italics and capitals are mine; the literal rendering is as follows:

"Sec. 7. The lands of the State, now owned or hereafter acquired, constituting  
"the forest preserve as now fixed by law, shall be forever kept as wild forest lands.  
"They shall not be leased, sold or exchanged, or be taken by any corporation, pub-  
"lic or private, nor shall the timber thereon be sold, removed or destroyed."

(First of January, 1895.)

Section ten of Article one is as follows:

"Sec. 10. The people of this State, in their right of  
"sovereignty, are deemed to possess the original and ulti-  
"mate property in and to all lands within the jurisdic-  
"tion of the State; and all lands the title to which shall

"fail, from a defect of heirs, shall revert, or escheat to  
"the people." (1846.)

Section twelve of Article one is as follows:

"Sec. 12. All lands within this state are declared to be  
"allodial, so that, subject only to the liability to escheat,  
"the entire and absolute property is vested in the owners,  
"according to the nature of their respective estates."  
(1846.)

Section one of Article one is as follows:

"Section 1. No member of this state shall be dis-  
"franchised, or deprived of any of the rights or privi-  
"leges secured to any citizen thereof, unless by the law of  
"the land, or the judgment of his peers." (1777.)

"The words 'by the law of the land,' as here used, do not mean a statute passed  
for the purpose of working the wrong." *Taylor v. Porter*, 4 Hill, 140, 145.

Section six of Article one is as follows:

"Sec. 6. No person shall be held to answer for a cap-  
"ital or otherwise infamous crime (except in cases of im-  
"peachment, and in cases of militia when in actual ser-  
"vice, and the land and naval forces in time of war, or  
"which this state may keep with a consent of Congress in  
"time of peace, and in cases of petit larceny, under the  
"regulation of the Legislature), unless on presentment or  
"indictment of a grand jury, and in any trial in any court  
"whatever the party accused shall be allowed to appear  
"and defend in person and with counsel as in civil ac-  
"tions. No person shall be subject to be twice put in  
"jeopardy for the same offense; nor shall he be com-  
"pelled in any criminal case to be a witness against him-  
"self; *nor be deprived of life, liberty or property with-*  
*"out due process of law; nor shall private property be*  
*"taken for public use, without just compensation."*  
(1821.)

Section seven of Article one contains the following:

"§ 7. When private property shall be taken for any public use, the compensation to be made therefore, *when such compensation is not made by the State,* shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law." (1846.)

*Italics are mine.*

Section eighteen of Article three:

"Sec. 18. The Legislature shall not pass a private or local bill in any of the following cases:

\* \* \* \* \*

"Granting to any corporation, association or individual the right to lay down railroad tracks Granting to any private corporation, association, or individual any exclusive privilege, immunity or franchise whatever." (1882.)

Section one of Article eight:

"Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed."

Section one of Article eight of the Constitution of 1846 was as follows:

"SECTION 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where in the judgment of the legislature, the object of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section, may be altered from time to time or repealed."

It has been in force ever since with the change of the "1" in legislature to a capital in 1895.

Section fourteen of Article one:

"Section 14. All fines, quarter sales or other like restraints upon alienation, reserved in any grant of land hereinafter to be made, shall be void." (1846.)

### III. STATUTES OF NEW YORK.

#### 1. *Relating to the plaintiff in error.*

Revised Statutes (1830), Part 1, Chapter XVIII., Title 3, § 8.

“ § 8. The charter of every corporation that shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature.”

Repealed by Chapter 687, Laws 1892 (the General Corporations Law), Chapter 672, Laws 1895. (“The General Corporations Law” amended.)

“ § 40. ALTERATION AND REPEAL OF CHARTER.—The charter of every corporation shall be subject to alteration, suspension and repeal in the discretion of the legislature.”

Chapter 140, Laws 1850 (the General Railroad Act).

“ § 48. The legislature may at any time annul or dissolve any incorporation formed under this act, but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.”

Repealed by Chapter 687, Laws 1892 (17th June, 1892), “the General Corporations Law,” which contained the following:

“ § 36. CONSTRUCTION.—The provisions of this chapter, and of the stock corporation law, the railroad law, the transportation corporations law, and the business corporations law, so far as they are substantially the same as those of laws existing on April 30, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed in this chapter, or in the stock corporation law, the railroad

" law, the transportation corporations law, or the business corporations law, and not as new enactments."

Chap. 236. Laws 1863.

" An Act to encourage and facilitate the construction of a railroad along the valley of the upper Hudson into the wilderness in the northern part of the State, and the development of the resources thereof.

" SECTION 1. Albert L. Cheney may associate with him any number of persons, and make and file articles of association as prescribed by the act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty" (Chapter 140 above mentioned), for the purpose of constructing and operating a railroad from some point in the County of Saratoga up and along the valley of the upper Hudson into the wilderness in the northern part of this State; and when so organized such corporation shall have the rights and privileges given by said act and the acts amending the same, and be subject to the provisions thereof, except so far as the same are inconsistent with the provisions of this act.

" § 2. The said corporation, when so formed, may purchase, take and hold lands to the amount of one million of acres of lands in said wilderness, in addition to the lands which it shall be authorized to take under the provisions of the said act, passed April second, eighteen hundred and fifty, and the acts amending the same; and all of said lands shall be free and exempt from all taxation until the twelfth day of September, eighteen hundred and eighty-three; but such exemption shall not extend or apply to the roadbed or track of said corporation, nor to lands occupied or used for structures necessary to the working of its road, nor to any lands

" after the same shall be sold, or contracted to be sold,  
" by said corporation.

" § 3. The said corporation shall report annually, on the  
" first Monday of January, to the State Engineer and Sur-  
" veyor, the quantity of lands sold by it, with a de-  
" scription thereof and the names of the grantees of said  
" lands.

" § 4. The said corporation when so formed, shall be  
" authorized during the period of its charter to convert  
" and prepare for market the natural products of the  
" forest, and to mine and prepare for market the iron and  
" other ores and minerals upon its lands, and to transport,  
" sell and dispose of the same.

§ 5. Unless said corporation shall construct and put in  
" operation at least twenty-five miles of its road by the  
" first day of September, eighteen hundred and sixty-four,  
" and thirty-five additional miles of its road by the first  
" day of December, eighteen hundred and sixty-six, and  
" twenty-five additional miles of its road by the first day  
" of December, eighteen hundred and sixty-eight, the said  
" exemptions from taxation shall cease, and said corpor-  
" ation shall not be entitled to said exemptions, unless  
" on or before the first day of January, eighteen hundred  
" and sixty-four, it shall deposit with the Comptroller of  
" this State, in his name of office, a State of New York or  
" United States stock, bearing at least five per cent. in-  
" terest to the amount of twenty thousand dollars at par,  
" to be held as security for the taxes on the lands afore-  
" said, from the year eighteen hundred and sixty-three to  
" eighteen hundred and sixty-eight inclusive, in case said  
" corporation shall not construct and put in operation the  
" portions of its road in this section mentioned, but in  
" case such portions of said road shall be constructed and  
" put in operation as before mentioned, the said stock  
" shall be re-transferred to said company, and the said

" company until default shall be made in the conditions  
" aforesaid shall be authorized to collect and receive the  
" interest which may from time to time become payable  
" on the said stock so transferred to the said Comptroller  
" as aforesaid, and the said Comptroller shall give to the  
" said company the requisite authority to receive such in-  
" terest. But nothing in this act contained shall be con-  
" strued to make the State liable to pay any county, town,  
" school or highway tax upon any of said lands hereby  
" exempted from taxation.

" § 6. The evidence of the construction and operation  
" of the railroad mentioned in the fifth section of this act  
" shall be the affidavit of the president, vice-president or  
" chief engineer of said corporation which shall be filed in  
" the office of the State Engineer and Surveyor not more  
" than ten days after the time limited for such construc-  
" tion.

" § 7. The said corporation shall not be required to  
" finish its road and put it in operation except as men-  
" tioned in the fifth section of this act, before the first  
" day of January, eighteen hundred and seventy.

" § 8. This act shall take effect immediately."

" Chap. 250." (Laws 1865).

" AN ACT to authorize the Adirondack Company to ex-  
" tend its railroad to Lake Ontario or River St. Law-  
" rence, and to increase its capital stock.

" Passed March 31, 1865."

" SECTION 1. The Adirondack Company is hereby au-  
" thorized to amend its articles of association so as to en-  
" able it, under the general law, to extend its railroad to  
" some point on Lake Ontario or River St. Lawrence, and  
" to increase its capital stock to such an amount as may be  
" necessary for that purpose, not to exceed five millions of  
" dollars additional capital.

" § 2. This act shall take effect immediately."

"Chap. 718." (Laws 1868).

"AN ACT to amend an act entitled 'An act to encourage and to facilitate the construction of a railroad along the valley of the Upper Hudson into the wilderness in the northern part of this State, and the development of the resources thereof,' passed April twenty-seventh, eighteen hundred and sixty-three, and for the relief of the Adirondack Company under said act.

"Passed May 6, 1868, three-fifths being present."

"SECTION 1. The time allowed the Adirondack Company to construct the thirty-five miles of its road mentioned in section five of chapter two hundred and thirty-six of the laws of eighteen hundred and sixty-three, is extended to the thirty-first day of December, eighteen hundred and seventy, and if said company shall construct one-third of said thirty-five miles of road in each of the years eighteen hundred and sixty-eight, eighteen hundred and sixty-nine and eighteen hundred and seventy, continuous by northward from the present northern extremity of the twenty-five miles of said road already constructed, it shall be relieved from all forfeitures imposed by said act, and shall be entitled to all the rights and privileges, exemptions and franchises granted by said act; but in case said company shall fail to construct and complete by the thirty-first day of December, eighteen hundred and sixty-eight, one-third of said thirty-five miles of its road, northward from its present terminus, this act shall be of no force and effect, anything herein contained to the contrary notwithstanding.

"§ 2. The twenty United States government bonds deposited with the Comptroller of the State, pursuant to section five of said act, shall remain in his hands as security for the taxes upon the lands mentioned in

“ said act for the years eighteen hundred and sixty-three  
 “ to eighteen hundred and seventy, inclusive, in case said  
 “ corporation shall not complete said thirty-five miles of  
 “ its road, as provided by the first section of this act;  
 “ but in case said thirty-five miles of road shall be con-  
 “ structed, the said bonds shall be transferred to said com-  
 “ pany, and until default shall be made in the perfor-  
 “ mance of the conditions aforesaid, said company shall be  
 “ authorised to collect and receive the interest on said  
 “ bonds, and the Comptroller shall give to said company  
 “ the requisite authority to receive the said interest.

“ § 3. The said company may construct a branch of its  
 “ road from some point on its line between the north line  
 “ of the town of Thurman in the County of Warren, and  
 “ the southerly line of the County of Essex, and so much  
 “ of such branch railroad as shall be constructed by said  
 “ company, continuously northward from the main line of  
 “ said company's road, shall be deemed a part of the  
 “ thirty-five miles of the road required to be built by the  
 “ first and second sections of this act, and of the eighty-  
 “ five miles of said road required to be built by chapter  
 “ two hundred and thirty-six of the laws of eighteen hun-  
 “ dred and sixty-three.

“ § 4. This act shall take effect immediately.”

Chapter 850 of the laws of 1868 provided that if the Company should complete the thirty-five miles of road as follows: twelve in 1868, twelve in 1869 and eleven in 1870, “ Then said company shall be entitled to all the rights, privileges, exemptions and franchises granted by chap- “ ter two hundred and thirty-six of the laws of eighteen “ hundred and sixty-three.”

“ Chap. 857.” (Laws 1871).

“ AN ACT to amend an act entitled ‘ An act to amend  
 “ an act to encourage and facilitate the construction of a

“ railroad along the valley of the upper Hudson into  
 “ the wilderness, in the northern part of this State, and  
 “ the development of the resources thereof,’ passed April  
 “ twenty-seventh, eighteen hundred and sixty-three, and  
 “ for the relief of the Adirondack Company formed under  
 “ said act, passed May eighth, eighteen hundred and  
 “ sixty-eight.

“ Passed April 28, 1871; three-fifths being present.”

“ SECTION 1. Section three of ‘ An act entitled ‘ An act  
 “ to amend an act to encourage and facilitate the con-  
 “ struction of a railroad along the valley of the upper  
 “ Hudson into the wilderness, in the northern part of  
 “ this State, and the development of the resources there-  
 “ of, passed April twenty-seventh, eighteen hundred and  
 “ sixty-three, and for the relief of the Adirondack Com-  
 “ pany formed under said act,’ passed May eighth,  
 “ eighteen hundred and sixty-eight, is hereby amended  
 “ by striking out the following words, to wit: ‘ and the  
 “ southerly line of the County of Essex,’ and inserting in  
 “ lieu thereof the following words, to wit: ‘ and the north  
 “ line of the town of Newcomb, in the County of Essex.’

“ § 2. This act shall take effect immediately.”

“ Chap. 864.” (Laws 1872).

“ AN ACT to authorise the Adirondack Company to  
 “ construct and operate a branch of its railroad from its  
 “ main line to the north bounds of the State.

“ Passed May 31, 1872.”

“ SECTION 1. The Adirondack Company is hereby  
 “ authorised to construct and operate a branch of its rail-  
 “ road, commencing at some point in its line between the  
 “ south line of the town of Thurman, in the county of  
 “ Warren, and the north line of the town of Newcomb,  
 “ in the county of Essex, and running to the north bounds

"of this State, in either of the towns of Mooers or Champ-  
lain, in the county of Clinton.

"§ 2. This act will take effect immediately."

"Chap. 695." (Laws 1873).

"AN ACT authorising the Adirondack Company to build  
a branch railroad to the village of Caldwell.

"Passed June 10, 1873.

"SECTION 1. The Adirondack Company is hereby  
authorised and empowered to build a branch railroad  
from their railroad in the town of Hadley to the village  
of Caldwell at the head of Lake George, and to charge  
not to exceed one dollar for each passenger carried over  
such extension.

"§ 2. All the laws applicable to the said Adirondack  
Company's railroad are hereby made applicable to said  
extension.

"§ 3. This act shall take effect immediately."

"Chap. 469." (Laws 1873).

"An Act relative to the purchasers of the franchises  
and property of corporations whose franchises and prop-  
erty shall have been sold by mortgage.

"Passed May 9, 1873."

"SECTION 1. Whenever the franchises, easements,  
privileges, rights and liberties of any corporation created  
by any act of the legislature of this State, or formed or  
incorporated under or by virtue of any general act  
thereof, and empowered by said act to mortgage its  
property, or franchises, and the property, estate and  
effects of any such corporation, have been heretofore,  
or may be hereafter, sold by virtue of any mortgage exe-  
cuted by such corporation; and whenever the purchaser  
or purchasers thereof shall have acquired title to the

" same, in the manner prescribed by law, such purchaser  
 " or purchasers may associate with him or them any  
 " number of persons, and upon making and filing articles  
 " of association as prescribed by this act, such purchaser  
 " or purchasers and his or their associates, and their  
 " successors and assigns, being residents of this State, shall  
 " thereupon become and be a body politic and corporate,  
 " and may take and receive a conveyance of and shall  
 " thereupon succeed to, possess, and exercise and enjoy  
 " all the rights, powers, franchises, privileges, easements,  
 " liberties, property, estate and effects of which the title  
 " shall have been acquired and conveyed as aforesaid."

" § 4. Said certificate" (to articles of association)  
 " shall be executed in duplicate and acknowledged before  
 " some officer competent to take acknowledgment of  
 " deeds. One of said duplicates shall be filed in the office  
 " of the Secretary of State, and the other thereof shall be  
 " filed in the office of the clerk of the county in which the  
 " said corporation first mentioned in this act had its prin-  
 " cipal place of business. And thereupon the said body  
 " politic and corporate so formed as aforesaid shall exist  
 " for the time, and may and shall possess, exercise and  
 " enjoy, all the powers, privileges, rights, liberties, ease-  
 " ments and franchises, possessed by the said former cor-  
 " poration, and in the same manner, and to the same ex-  
 " tent, and with the same force and effect as the same  
 " could have been exercised by the same former corpora-  
 " tion, had not such sale as aforesaid been made.

#### Chap. 446 (Laws 1876).

" SECTION 1. The first section of chapter four hundred  
 " and thirty of laws of eighteen hundred and seventy-  
 " four entitled 'An act to facilitate the reorganization of  
 " railroads sold under mortgage, and providing for the

"formation of new companies in such cases' is hereby  
"amended so as to read as follows:

"§ 1. In case the railroad and property connected  
"therewith, and the rights, privileges and franchises of  
"any corporation, except a street railroad company, cre-  
"ated under the general railroad law of this State, or  
"existing under any special or general act or acts of the  
"Legislature thereof, shall be sold under or pursuant to  
"the judgment or decree of any court of competent juris-  
"diction made or given to execute the provisions or en-  
"force the lien of any deed or deeds of trust, or mortgage  
"theretofore executed by any such company, the pur-  
"chasers of such railroad property and franchises, and  
"such persons as they may associate with themselves,  
"their grantees or assignees or a majority of them, may be-  
"come a body politic and corporate, and as such may  
"take, hold and possess the title and property included in  
"said sale, and shall have all the franchises, rights, pow-  
"ers, privileges and immunities which were possessed be-  
"fore such sale by the corporation whose property shall  
"have been sold as aforesaid, by and upon filing in  
"the office of the Secretary of State a certifi-  
"cate \* \* \* \*

"And upon the due execution of such certificate, and  
"the filing of the same in the office of the Secretary of  
"State, the persons executing such certificate, and who  
"shall have acquired the title to the property and fran-  
"chises sold as aforesaid their associates, successors and  
"assigns, shall become and be a body politic and corpor-  
"ate, by the name specified in such certificate, and be-  
"come and be vested with, and entitled to exercise and  
"enjoy, all the rights, privileges and franchises, which at  
"the time of such sale belonged to, or were vested in the  
"corporation, which last owned the property so sold, or  
"its receiver, and shall be subject to all the provisions,

"duties and liabilities imposed by the act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, and of the acts amendatory thereof, except so far as said provisions, duties and liabilities may be inconsistent herewith, and with the last named rights, privileges or franchises;" \* \* \* \* "Said articles shall not be inconsistent with the Constitution or laws of this State, and shall be binding upon the company until changed as therein provided for, or until otherwise provided by law."

*"The Railroad Law.*

"Chapter 565, Laws 1890.

"AN ACT in relation to railroads constituting chapter thirty-nine of the general laws.

"(Became a law June 7, 1890, taking effect May 1, 1891.)

"Section 1, SHORT TITLE.—This chapter shall be known as the railroad law.

"§ 2. INCORPORATION.—Fifteen or more persons may become a corporation, for the purpose of building, maintaining and operating a railroad, or of maintaining and operating a railroad already built, not owned by a railroad corporation, or for both purposes, by executing, acknowledging and filing a certificate, in which shall be stated:

- "1. The name of the corporation.
- "2. The number of years it is to continue.
- "3. The kind of road to be built or operated.
- "4. Its length and termini.
- "5. The name of each county in which any part of it is to be located.

" § 4. ADDITIONAL POWERS CONFERRED.—Subject to the  
" limitations and requirements of this chapter, every rail-  
" road corporation, in addition to the powers given by the  
" general and stock corporation laws, shall have power:

" 1. ENTRY UPON LANDS FOR PURPOSES OF SURVEY.—  
" To cause the necessary examination and survey for its  
" proposed railroad to be made for the selection of the  
" most advantageous route; and for such purpose, by its  
" officers, agents or servants, to enter upon any lands or  
" waters, subject to liability to the owner for all damages  
" done.

" 2. ACQUISITION OF REAL ESTATE.—To take and hold  
" such voluntary grants of real estate and other property  
" as shall be made to it to aid in the construction, mainte-  
" nance and accommodation of its railroad; and to acquire  
" by condemnation such real estate and property as may  
" be necessary for such construction, maintenance and  
" accommodation in the manner provided by law, but the  
" real property acquired by condemnation shall be held  
" and used only for the purposes of the corporation during  
" the continuance of the corporate existence."

" § 5. WHEN CORPORATE POWERS TO CEASE.—If any  
" domestic railroad corporation shall not, within five years  
" after its certificate of incorporation is filed, begin the  
" construction of its road and expend thereon ten per  
" cent(um) of the amount of its capital, or shall not finish  
" its road and put it in operation in ten years from the  
" time of filing such certificate, its corporate existence and  
" powers shall cease. (But if any such steam railroad cor-  
" poration whose certificate of incorporation was filed since  
" the year eighteen hundred and eighty, and whose road  
" as designated in such certificate is wholly within one  
" county and not more than ten miles in length, has  
" acquired the real property necessary for its roadbed by

"purchase, its corporate existence and powers shall not  
"be deemed to have ceased because of its failure to com-  
"ply with the provisions of this article; and the time for  
"beginning the construction of its road and expending  
"thereon ten per centum of its capital is extended until  
"thirteen years from the date of the filing of such certifi-  
"cate, and the time for finishing its road and putting it in  
"operation is extended until eighteen years from the date  
"of such filing.")

The words and letters enclosed in brackets added by chapter 433 of the laws of 1893.

"§ 6.—LOCATION OF ROUTE.—Every railroad corpora-  
"tion except a street surface railroad corporation and an  
"elevated railway corporation, before constructing any  
"part of its road in any county named in its certificate of  
"incorporation, or instituting any proceedings for the  
"condemnation of real property therein, shall make a  
"map and profile of the route adopted by it in such  
"county, certified by the president and engineer of the  
"corporation, or a majority of the directors, and file it in  
"the office of the clerk of the county in which the road is  
"to be made. The corporation shall give written notice  
"to all actual occupants of the lands over which the route  
"of the road is so designated, and which has not been  
"purchased by or given to it, of the time and place such  
"map and profile were filed, and that such route passes  
"over the lands of such occupants. Any such occupant  
"or the owner of the land aggrieved by the proposed loca-  
"tion may, within fifteen days after receiving such notice,  
"give ten days' written notice to such corporation and to  
"the owners or occupants of lands to be affected by any  
"proposed alteration, of the time and place of an applica-  
"tion to a justice of the supreme court, in the judicial  
"district where the lands are situated, by petition duly  
"verified, for the appointment of commissioners to exam-  
"ine the route. The petition shall state the objections to

" the route designated, shall designate the route to which  
" it is proposed to alter the same, and shall be accompa-  
" nied with a survey, map and profile of the route desig-  
" nated by the corporation, and of the proposed alteration  
" thereof, and copies thereof shall be served upon the cor-  
" poration and such owners or occupants with the notice  
" of the application. The justice may, upon the hearing  
" of the application, appoint three disinterested persons,  
" one of whom must be a practical civil engineer, commis-  
" sioners to examine the route proposed by the corpora-  
" tion, and the route to which it is proposed to alter the  
" same, and after hearing the parties, to affirm the route  
" originally designated, or adopt the proposed alteration  
" thereof, as may be consistent with the just rights of all  
" parties and the public, including the owners or occu-  
" pants of lands upon the proposed alteration; but  
" no alteration of the route shall be made except by  
" the concurrence of the commissioner, who is a prac-  
" tical civil engineer, nor which will cause greater damage  
" or injury to lands or materially greater length of road  
" than the route designated by the corporation, nor which  
" shall substantially change the general line adopted by  
" the corporation. The commissioners shall, within thirty  
" days after their appointment, make and certify their  
" written determination, which with the petition, map,  
" survey and profile, and any testimony taken before  
" them, shall be immediately filed in the office of the  
" county clerk of the county; within twenty days after  
" such filing, any party may, by written notice to the  
" other, appeal to the general term of the supreme court  
" from the decision of the commissioners, which appeal  
" shall be heard and decided at the next term held in the  
" department in which the lands of the petitioners or any  
" of them are situated, for which the same can be noticed,  
" according to the rules and practice of the court. On the

" hearing of such appeal, the court may affirm the route  
" proposed by the corporation or may adopt that proposed  
" by the petitioner. The commissioners shall each be en-  
" titled to six dollars per day for their services, and to  
" their reasonable and necessary expenses, to be paid by  
" the person who applied for their appointment; if the  
" route of the road, as designated by the corporation, is  
" altered by the commissioners, or by the order of the  
" court, the corporation shall refund to the petitioner the  
" amount so paid, unless the decision of the commissioners  
" is reversed upon appeal taken by the corporation. No  
" such corporation shall institute any proceedings for the  
" condemnation of real property in any county until after  
" the expiration of fifteen days from the service by it of  
" the notice required by this section. Every such cor-  
" poration shall transmit to the board of railroad commis-  
" sioners the following maps, profiles and drawings ex-  
" hibiting the characteristics of their road, to wit:

" A map or maps showing the length and direction of  
" each straight line; the length and radius of each curve;  
" the point of crossing of each town and county line, and  
" the length of line of each town and county accurately  
" determined by measurements to be taken after the com-  
" pletion of the road.

" Whenever any part of the road completed and used,  
" such maps and profiles of such completed part shall be  
" filed with such board within three months after the  
" completion of any such portion and the commencement  
" of its operation; and when any additional portion of the  
" road shall be completed and used, other maps shall be  
" filed within the same period of time, showing the addi-  
" tional parts so completed. If the route, as located,  
" upon the map and profile filed in the office of any county  
" clerk, shall have been changed, it shall also cause a  
" copy of the map and profile filed in the office of the rail-

" road commissioners, so far as it may relate to the location in such county, to be filed in the office of the county clerk."

" **§ 7. ACQUISITION OF TITLE TO REAL PROPERTY.**—  
" All real property, required by any railroad corporation  
" for the purpose of its incorporation, shall be deemed  
" to be required for a public use. If the corporation is  
" unable to agree for the purchase of any real property,  
" or of any right, interest or easement herein, required  
" for such purpose, or if the owner thereof shall be in-  
" capable of selling the same, or if after diligent search  
" and inquiry the name and residence of such owner  
" cannot be ascertained, it shall have the right to acquire  
" title thereto by condemnation. It shall also have such  
" right in the following cases: \* \* \* \*

" Waters commonly used for domestic, agricultural or  
" manufacturing purposes, shall not be taken by con-  
" demnation to such an extent as to injuriously inter-  
" fere with such use in future. No railroad corporation  
" shall have the right to acquire by condemnation any  
" right or easement in or to any real property owned or  
" occupied by any other railroad corporation, except the  
" right to intersect or cross the tracks and lands owned  
" or held for right of way by such other corporation,  
" without appropriating or affecting any lands owned or  
" held for depots or gravel beds.

Sections 6 and 7 as amended by Chapter 678 of the Laws of 1892.

" **§ 8. RAILROADS THROUGH PUBLIC LANDS.**—The commissioners of the land office may grant to any domestic railroad corporation any land belonging to the people of the state, except the reservation at Niagara and the Concourse lands on Coney Island, which may be required for the purposes of its road on such terms as may be agreed on by them; or such corporation may

"acquire title thereto by condemnation; and the county  
"or town officers having charge of any land belonging to  
"any county or town, required for such corporation for  
"the purpose of its road, may grant such land to the  
"corporation for such compensation as may be agreed  
"on."

"**§ 83. LIABILITIES OF REORGANIZED RAILROAD CORPORATIONS.**—A railroad corporation, reorganized under the provisions of law, relating to the formation of new or reorganized corporations upon the sale of their property or franchise, shall not be compelled or required to extend its road beyond the portion thereof constructed, at the time the new or reorganized corporation acquired title to such railroad property and franchise, provided the board of railroad commissioners of the state shall certify that in their opinion the public interests under all the circumstances do not require such extension. If such board shall so certify and shall file in their office such certificate, which certificate shall be irreversible by such board, such corporation shall not be deemed to have incurred any obligation so to extend its road and such certificate shall be a bar to any proceedings to compel it to make such extension, or to annul its existence for failure so to do, and shall be final and conclusive in all courts and proceedings whatever. This section shall not authorize the abandonment of any portion of a railroad which has been constructed or operated or apply to Kings County."

Section 3359 of the Code of Civil Procedure is as follows:

"**§ 3359.** Whenever any person is authorized to acquire title to real property, for a public use by condemnation, the proceeding for that purpose shall be taken in the manner prescribed in this title."

Section 3360 begins as follows:

" § 3360. The proceeding shall be instituted *by the presentation of a petition* by the plaintiff to the supreme court setting forth the following facts: "

Section 3371 contains the following:

" If the report " (of the commissioners) " is confirmed, the court shall enter a final order in the proceeding, directing that compensation shall be made to the owners of the property, pursuant to the determination of the commissioners, and that upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment. " Deposit of the money to the credit of, or payable to the order of, the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this title."

§ 3381 is as follows:

" § 3381. Upon service of the petition, or at any time afterwards before the entry of the final order, the plaintiff may file in the clerk's office of each county where any part of the property is situated, a notice of the pendency of the proceeding, stating the names of the parties and the object of the proceeding, and containing a brief description of the property affected thereby, and from the time of filing, such notice shall be constructive notice to a purchaser, or incumbrancer of the property affected thereby, from or against a defendant with respect to whom the notice is directed to be indexed, as herein prescribed, and a person whose conveyance or incumbrance is subsequently executed or subsequently recorded, is bound by all proceedings taken after the filing of the notice, to the same extent as if he was a party thereto. The county clerk must immediately record such notice when filed in the book

" in his office kept for the purpose of recording notices of  
 " pendency of actions, and index it to the name of each  
 " defendant specified in the direction appended at the  
 " foot of the notice, and subscribed by the plaintiff or  
 " his attorney."

*2. The act under which the forest preserve board took the land.*

Chap. 220, Laws 1897.

" AN ACT to provide for the acquisition of land in the  
 " territory embraced in the Adirondack park and  
 " making an appropriation therefor.

" Became a law April 8, 1897, with the approval of the  
 " the Governor.

" Passed, three-fifths being present.

" *The people of the State of New York, represented  
 " in Senate and Assembly, do enact as follows:*

" Section 1. The governor, within twenty days after  
 " this act takes effect, shall appoint from the commis-  
 " sioners of fisheries, game and forest and the commission-  
 " ers of the land office, by and with the advice and con-  
 " sent of the senate, three persons to constitute a board to  
 " be known as the 'forest preserve board.' The members  
 " of such board may be removed by the governor at his  
 " pleasure. Vacancies shall be filled in like manner as an  
 " original appointment. The members of the board shall  
 " not receive any compensation for their services under  
 " this act, but shall receive their actual and necessary ex-  
 " penses to be audited by the comptroller. The board  
 " may employ such clerical and other assistants as it may  
 " deem necessary. The forest preserve board annually in  
 " the month of January shall make a written report to  
 " the governor showing in detail all its transactions under  
 " this act during the preceding calendar year.

" § 2. It shall be the duty of the forest preserve board  
 " and it is hereby authorized to acquire for the state, by

" purchase or otherwise, land, structures or waters or  
" such portion thereof in the territory embraced in the  
" Adirondack park, as defined and limited by the fish-  
" eries, game and forest law, as it may deem advisable for  
" the interests of the state.

" § 3. The forest preserve board may enter on, and take  
" possession of any land, structures and waters in the  
" territory embraced in the Adirondack park, the appro-  
" priation of which in its judgment shall be necessary for  
" the purposes specified in section two hundred and  
" ninety of the fisheries, game and forest law, and in sec-  
" tion seven of article seven of the constitution.

" § 4. Upon the request of the forest preserve board an  
" accurate description of such lands so to be appropri-  
" ated shall be made by the state engineer and surveyor,  
" or the superintendent of the state land survey, and cer-  
" tified by him to be correct, and such board or a majority  
" thereof shall indorse on such description a certificate  
" stating that the lands described therein have been ap-  
" propriated by the state for the purpose of making them  
" a part of the Adirondack park; and such description  
" and certificate shall be filed in the office of the secre-  
" tary of state. The forest preserve board shall there-  
" upon serve on the owner of any real property so ap-  
" propriated a notice of the filing and the date of filing of  
" such description and containing a general description  
" of the real property belonging to such owner which has  
" been so appropriated; and from the time of such  
" service, the entry upon and appropriation by the state  
" of the real property described in such notice for the  
" uses and purposes above specified shall be deemed com-  
" plete, and thereupon such property shall be deemed and  
" be the property of the state. Such notice shall be con-  
" clusive evidence of an entry and appropriation by the  
" state. The forest preserve board may cause duplicates

" of such notice with an affidavit of due service thereof  
" on such owner to be recorded in the books used for  
" recording deeds in the office of the clerk of any county  
" of this state where any of the property described therein  
" may be situated, and the record of such notice and of  
" such proof of service shall be evidence of the due service  
" thereof."

" § 5. Claims for the value of the property taken and  
" for damages caused by any such appropriation may be  
" adjusted by the forest preserve board if the amount  
" thereof can be agreed upon with the owners of the land  
" appropriated. The board may enter into an agreement  
" with the owner of any land so taken and appropriated,  
" for the value thereof, and for any damages resulting  
" from such appropriation. Upon making such agree-  
" ment the board shall deliver to the owner a certificate  
" stating the amount due to him on account of such ap-  
" propriation of his lands, and a duplicate of such certifi-  
" cate shall also be delivered to the comptroller. The  
" amount so fixed shall be paid by the treasurer upon  
" the warrant of the comptroller.

" § 6. If the forest preserve board is unable to agree with  
" the owner for the value of property so taken or appro-  
" priated, or on the amount of damages resulting there-  
" from, such owner, within two years after the service  
" upon him of the notice of appropriation as above specified,  
" may present to the court of claims a claim for the value  
" of such land and for such damages, and the court of  
" claims shall have jurisdiction to hear and determine such  
" claim and render judgment thereon. Upon filing in the  
" office of the comptroller a certified copy of the final judg-  
" ment of the court of claims, and a certificate of the  
" attorney-general that no appeal from such judgment has  
" been or will be taken by the state, or, if an appeal has  
" been taken a certified copy of the final judgment of the

" appellate court, affirming in whole or in part the judgment of the court of claims, the comptroller shall issue his warrant for the payment of the amount due the claimant by such judgment, with interest from the date of the judgment until the thirtieth day after the entry of such final judgment, and such amount shall be paid by the treasurer.

" § 7. The owner of land to be taken under this act may, at his option, within the limitations hereinafter prescribed, reserve the spruce timber thereon ten inches or more in diameter at a height of three feet above the ground. Such option must be exercised within six months after a service upon him of a notice of the appropriation of such land by the forest preserve board, by serving upon such board a written notice that he elects to reserve the spruce timber thereon. If such a notice be not served by the owner within the time above specified, he shall be deemed to have waived his right to such reservation, and such timber shall thereupon become and be the property of the State. In case land is acquired by purchase, the spruce timber and no other may be reserved by agreement between the board and the owner, subject to all the provisions of this act in relation to timber reserved after an appropriation of land by the forest preserve board. The presentation of a claim to the court of claims before the service of a notice of reservation, shall be deemed a waiver of the right to such reservation.

" § 8. The reservation of timber and the manner of exercising and consummating such right are subject to the following restrictions, limitations and conditions:

" 1. The reservation does not include or affect timber within twenty rods of a lake, pond or river, and such timber cannot be reserved. Roads may be cut or built across or through such reserved space of twenty rods, under

" the supervision of the forest preserve board, for the purpose of removing spruce timber from adjoining land, and the reservation of spruce timber within such space shall be deemed a reservation by the owner, his assignee or representative, of the right to cut other timber necessary in constructing such road, but such reservation does not confer a right to remove such other timber so cut, or to use it otherwise than in constructing a road.

" 2. The timber reserved must be removed from the land within fifteen years after the service of notice of reservation, or the making of an agreement subject to regulations to be prescribed by the forest preserve board; but such land shall not be cut over more than once, and the said board may prescribe regulations for the purpose of enforcing this limitation. All timber reserved and not removed from the land within such time shall thereupon become and be the property of the state, and all the claim or title thereto by the original owner, his assigns or representatives, shall thereupon be deemed abandoned."

" § 9. A person who reserves timber as herein provided, is not entitled to any compensation for the value of his land purchased or taken and appropriated by the state, nor for any damages caused thereby, until:

" 1. The timber so reserved is all removed and the object of the reservation fully consummated; or

" 2. The time limited for the removal of such timber has fully elapsed, or the right to remove any more timber is waived by a written instrument filed with the forest preserve board; and

" 3. The forest preserve board is satisfied that no trespass on state lands has been committed by such owner or his assigns or representatives; that no timber or other property of the state not so reserved has been taken, removed, destroyed or injured by him or them,

" and that a cause of action in behalf of the state does  
" not exist against him or them for any alleged trespass  
" or other injury to the property or interests of the state;  
" and

" 4. That the owner, his assignee, or other representative has fully complied with all rules, regulations and requirements of the forest preserve board concerning the use of streams or other property of the State for the purpose of removing such lumber.

" § 10. A warrant shall not be drawn by the comptroller for the amount of compensation agreed upon between the owner and the forest preserve board, nor for the amount of a judgment rendered by the court of claims, until a further certificate by the board is filed with him to the effect that the owner has not reserved any timber or that he, his assignee, or other representative, has complied with the provisions of this act, or has otherwise become entitled to receive the amount of the purchase price, award or judgment.

" § 11. The forest preserve board may settle and adjust any claims for damages due to the state on account of any trespasses or other injuries to the property or interests of the state, or penalties incurred by reason of such trespasses or otherwise, and the amount of such damages or penalties so adjusted shall be deducted from the original compensation agreed to be paid for the lands, or for damages, or from a judgment rendered by the court of claims on account of the appropriation of such land. A judgment recovered by the state for such a trespass or for a penalty shall likewise be deducted from the amount of such compensation or judgment.

" § 12. If timber is reserved upon land purchased or appropriated as provided by this act, interest is not payable upon the purchase price or the compensation which may be awarded for the value of such land or for

" damages caused by such appropriation, except as provided in section six.

" § 13. Persons entitled to cut and remove timber under " this act may use streams or other waters belonging to " the state within the forest preserve for the purpose of " removing such timber, under such regulations and con- " ditions as may be prescribed or imposed by the forest " preserve board. The persons using such waters shall " be liable for all damages caused by such use.

" § 14. If timber be reserved, its value at the time of " making an agreement between the owner and the forest " preserve board for the value of the land so appropriated " and the damages caused thereby, or at the time of the " presentation to the court of claims of a claim for such " value and damages, shall be taken into consideration in " determining the compensation to be awarded to the " owner on account of such appropriation either by such " agreement or by the judgment rendered upon such " claim.

" § 15. The forest preserve board may appoint inspect- " ors to examine the lands upon which timber is reserved " and ascertain and report to the board, from time to " time, or whenever required, whether such timber is be- " ing removed in accordance with the provisions of this " act, whether any trespasses or other violations of this " act are being committed, and whether the persons en- " titled to the use of such waters for the purpose of re- " moving timber have complied with the regulations and " conditions relating thereto, prescribed or imposed by " the board.

" § 16. The forest preserve board shall fix the compen- " sation of all clerks, inspectors or other assistants em- " ployed by it, which compensation shall be paid by the " treasurer, upon the certificate of the board and the " audit and warrant of the comptroller. A person so

" appointed may be removed at the pleasure of the board.

" § 17. The forest preserve board shall take such measures as may be necessary or proper to perfect the title "to any lands in the forest preserve now held by the state, "and for that purpose may pay and discharge any valid "lien or incumbrance upon such land, or may acquire "any outstanding or apparent right, title, claim or interest which, in its judgment, constitutes a cloud on such "title. The amounts necessary for the purposes of this "section shall be paid by the treasurer upon the certificate of the board and the audit and warrant of the "comptroller.

" § 18. If an offer is made by the forest preserve board "for the value of land appropriated, or for damages "caused by such appropriation, and such offer is not "accepted, and the recovery in the court of claims exceeds "the offer, the claimant is entitled to costs and disbursements as in an action in the supreme court, which shall "be allowed and taxed by the court of claims and included in its judgment. If in such a case the recovery "in the court of claims does not exceed the offer, costs "and disbursements to be taxed shall be awarded in favor "of the state against the claimant and deducted from the "amount awarded to him, or if no amount is awarded "judgment shall be entered in favor of the state against "the claimant for such costs and disbursements. If an "offer is not accepted it cannot be given in evidence on "the trial.

" § 19. When a judgment for damages is rendered for "the appropriation of any lands or waters for the purposes "specified in this act, and it appears that there is any lien "or incumbrance upon the property so appropriated, the "amount of such lien shall be stated in the judgment, and "the comptroller may deposit the amount awarded to "the claimant in any bank in which monies belonging to

"the state may be deposited, to the account of such judgment, to be paid and distributed to the persons entitled "to the same as directed by the judgment."

"§ 20. If a person cuts down or carries off any wood, "bark, underwood, trees or timber, or any part thereof, "or girdles or otherwise despoils a tree in the forest preserve, without the permission of the forest preserve board, an action may be maintained against him by the board in its name of office and in such an action the board may recover treble damages if demanded in the complaint. Every such person also forfeits to the state the sum of twenty-five dollars for every tree cut down or carried away by him or under his direction, to be recovered in a like action by the forest preserve board. All sums recovered in any such action shall be paid by the board to the state treasurer, and credited to the general fund.

"§ 21. Service of a notice by the forest preserve board under section four must be personal if the person to be served can be found in the state. The provisions of the code of civil procedure relating to the service of a summons in an action in the supreme court, except as to publication, apply, so far as practicable, to the service of such a notice. If a person to be served cannot with due diligence be found in the state, a justice of the supreme court may, by order, direct the manner of such service, and service shall be made accordingly.

"§ 22. The court of claims, if requested by the claimant or the attorney-general, shall examine the real property affected by the claim and take the testimony in relation thereto in the county where such property or a part thereof is situated. The actual and necessary expenses of each judge and of each officer of the court in making such examination and in so taking testimony

" shall be audited by the comptroller and paid from the  
" money appropriated for the purposes of this act.

" § 23. The power to appropriate real property, vested  
" in the forest preserve board by section four, is subject  
" to the following limitations: Such real property must  
" adjoin land already owned or appropriated by the state  
" at the time the description and certificate are filed in the  
" office of the secretary of state, except that timber land  
" not so adjoining state land may be appropriated when-  
" ever in the judgment of the board timber thereon  
" other than spruce, pine or hemlock is being cut or re-  
" moved to the detriment of the forest, or the interests of  
" the state.

" § 24. The sum of six hundred thousand dollars, or so  
" much thereof as may be necessary, is hereby appropri-  
" ated for the purposes specified in this act, out of any  
" monies in the treasury not otherwise appropriated. In  
" addition to the amount above appropriated, the comp-  
" troller, upon the written request of the forest preserve  
" board, is hereby authorized and directed to borrow,  
" from time to time, not exceeding in the aggregate  
" the sum of four hundred thousand dollars for the  
" purposes specified in this act, and to issue bonds or cer-  
" tificates therefor payable within ten years from their  
" date, bearing interest at a rate not exceeding five per  
" centum per annum, and which shall not be sold at less  
" than par. The sums so borrowed are hereby appropri-  
" ated, payable out of the moneys realized from the sale  
" of such bonds or certificates, to be expended under the  
" direction of the forest preserve board for the purposes of  
" this act, and to be paid by the treasurer on the war-  
" rant of the comptroller.

" § 25. All acts and parts of acts inconsistent with this  
" act are hereby repealed.

" § 26. This act shall take effect immediately."

*3. Other acts relating to the forest preserve and the Adirondack park :*

“ Chap. 283 ” (Laws 1885.)

“ Passed May 15, 1885 ; three-fifths being present.”

“ AN ACT to establish a forest commission, and to define its powers and duties and for the preservation of forests.”

“ SECTION 1. There shall be a forest commission which shall consist of three persons who shall be styled forest commissioners, and who may be removed by the governor for cause. The forest commissioners shall be appointed by the governor by and with the advice and consent of the senate.

“ § 2. At the first meeting of the forest commissioners they shall divide themselves by lot, so that the term of one shall expire in two years, one in four years, and one in six years from the first day of February next ensuing. Except as to the three terms of office thus determined, the term of office of a forest commissioner shall be six years from the first day of February on which the preceding term expires.

“ § 3. During the month of January, in the year eighteen hundred and eighty-eight, and in every second year thereafter, the governor by and with the advice and consent of the senate, shall appoint one forest commissioner. Vacancies that may exist in the office of a forest commissioner after the commencement of a term of office shall be filled by the governor's appointment subject to the confirmation of the senate at its next session for the unexpired portion of the term in which the vacancy occurs.

“ § 4. The forest commissioners shall serve without compensation except that there shall be paid them their reasonable expenses incurred in the performance of their official duties.

" § 5. The forest commission shall have power to employ a forest warden, forest inspectors, a clerk and all such agents, as they may deem necessary, and to fix their compensations, but the expenses and salaries of such warden, agents, clerk, inspectors and assistants shall not exceed in the aggregate with the other expenses of the commission the sum therefor appropriated by the legislature.

" § 6. The trustees of public buildings, under chapter three hundred and forty-nine, laws of eighteen hundred and eighty-three, shall provide rooms for office for the forest commission, with proper furniture and fixtures, and with warming and lights.

" § 7. All the lands now owned or which may hereafter be acquired by the state of New York, within the counties of Clinton, excepting the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster and Sullivan, shall constitute and be known as the forest preserve.

" § 8. The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by any person or corporation, public or private.

" § 9. The forest commission shall have the care, custody, control and superintendence of the forest preserve. It shall be the duty of the commission to maintain and protect the forests now on the forest preserve, and to promote as far as practicable the further growth of forests thereon. It shall also have charge of the public interests of the state, with regard to forests and tree planting, and especially with reference to forest fires in every part of the state. It shall have as to all lands now or hereafter included in the forest preserve, but

" subject to the provisions of this act, all the powers now  
" vested in the commissioners of the land office and in  
" the comptroller as to such of the said lands as are now  
" owned by the state. The forest commission may, from  
" time to time, prescribe rules or regulations and may,  
" from time to time, alter or amend the same, affecting  
" the whole or any part of the forest preserve, and for  
" its use, care and administration; but neither such rules  
" or regulations, nor anything herein contained shall pre-  
" vent or operate to prevent the free use of any road,  
" stream or water as the same may have been heretofore  
" used or as may be reasonably required in the prosecu-  
" tion of any lawful business.

" § 10. The forest warden, forest inspectors, foresters  
" and other persons acting upon the forest preserve under  
" the written employment of the forest warden or of the  
" forest commission may, without warrant, arrest any per-  
" son found upon the forest preserve violating any of the  
" provisions of this act; but in case of such arrest, the  
" person making the arrest shall forthwith take the person  
" arrested before the nearest magistrate having jurisdiction  
" to issue warrants in such case, and there make, or pro-  
" cure to be made, a complaint in writing, upon which  
" complaint the magistrate shall act as the case may  
" require."

" § 11. The forest commission may bring in the name, or  
" on behalf of the people of the state of New York, any  
" action to prevent injury to the forest preserve or trespass  
" thereon, to recover damages for such injury or trespass,  
" to recover lands properly forming part of the forest pre-  
" serve, but occupied or held by persons not entitled  
" thereto, and in all other respects for the protection and  
" maintenance of the forest preserve, which any owner of  
" lands would be entitled to bring. The forest commission  
" may also maintain, in the name or on behalf of the people

"of the state, an action for the trespass specified in  
"section seventy-four, article fifth, title five, chapter  
"nine, part one of the Revised Statutes, when such tres-  
"pass is committed upon any lands within the forest pre-  
"serve. In such action there shall be recoverable the  
"same penalty, and a like execution shall issue, and the  
"defendant be imprisoned thereunder without being en-  
"titled to the liberties of the jail, all as provided in sections  
"seventy-four and seventy-six of the said article; and in  
"such action the plaintiff shall be entitled to an order of  
"arrest before judgment as in the cases mentioned in sec-  
"tion five hundred and forty-nine of the Code of Civil  
"Procedure. The trespass herein mentioned shall be  
"deemed to include, in addition to the acts herein speci-  
"fied in the said section seventy-four, any act of cutting  
"or causing to be cut, or assisting to cut, any tree or  
"timber standing within the forest preserve, or any bark,  
"thereon, with intent to remove such tree or timber, or  
"any portion thereof, or bark therefrom, from the said  
"forest preserve. With the consent of the attorney-  
"general and the comptroller, the forest commission may  
"employ attorneys and counsel to prosecute any such ac-  
"tion, or to defend any action brought against the com-  
"mission or any of its members or subordinates arising out  
"of their or his official conduct with relation to the forest  
"preserve. Any attorney or counsel so employed shall  
"act under the direction and in the name of the attorney-  
"general. Where such attorney or counsel is not so  
"employed, the attorney-general shall prosecute and de-  
"fend such actions.

"§ 12. In an action brought by or at the instance of  
"the forest commission, an injunction, either prelim-  
"inary or final, shall upon application be granted restrain-  
"ing any act of trespass, waste or destruction upon the  
"forest preserve.

“ § 13. Whenever the state owns or shall own  
“ an undivided interest with any person in any lands  
“ within the counties mentioned in section eight of this  
“ act, or is or shall be in possession of any such lands as  
“ joint tenants or tenants in common with any person who  
“ has an estate of freehold therein, the attorney-general  
“ shall, upon the request of the forest commission, bring  
“ an action in the name of the people of the state of New  
“ York, for the actual partition of the said lands according  
“ to the respective rights of the parties interested therein ;  
“ and upon the consent in writing of the forest commission  
“ any such person may maintain an action for the actual  
“ partition of such lands, according to the respective  
“ rights of the parties interested therein, in the same  
“ manner as if the state were not entitled to exemption  
“ from legal proceedings, service of process in such  
“ action upon the attorney-general to be deemed service  
“ upon the state. Such actions, the proceedings and the  
“ judgment therein, and the proceedings under the judg-  
“ ment therein shall be according to the practice at the  
“ time prevailing in actions of partition and shall have  
“ the same force and effect as in other actions, except that  
“ no costs shall be allowed to the plaintiff in such actions,  
“ and except that no sale of lands shall be adjudged  
“ therein. The forest commission may, without suit, but  
“ upon consent of the comptroller, agree with any person  
“ or persons owning lands within the said towns jointly or  
“ as tenants in common with the state for the partition of  
“ such lands, and upon such agreement and consent, the  
“ comptroller shall make on behalf of the people of the  
“ state any conveyance necessary or proper in such par-  
“ tition, such conveyance to be forthwith recorded as now  
“ provided by law as to conveyances made by the commis-  
“ sioners of the land office.

“ § 14. All income that may hereafter be derived from

" state forest lands shall be paid over by the forest commission to the treasury of the state.

" § 15. A strict account shall be kept of all receipts and expenses, which account shall be audited by the commissioner, and a general summary thereof shall be reported annually to the legislature.

" § 16. The forest commission shall, in January of every year, make a written report to the legislature of their proceedings, together with such recommendations of further legislative or official action as they may deem proper.

" § 17. The supervisor of every town in the state in which wild or forest lands belonging to the state are located, except within the counties mentioned in section seven of this act, shall be by virtue of his office the protector of these lands, subject to the instructions he may receive from the forest commission. It shall be his duty to report to the district-attorney for prosecution any acts of spoilation or injury that may be done, and it shall be the duty of such district-attorney to institute proceedings for the prevention of further trespass, and for the recovery of all damages that may have been committed, with costs of prosecution. The supervisors shall also report their proceedings therein to the forest commission. In towns where the forest commission shall deem it necessary, they may serve a notice upon the supervisor, requiring him to appoint one or more forest guards, and if more than one in a town, the district of each shall be properly defined. The guard so appointed shall have such powers, and perform such duties and receive such pay as the forest commission may determine.

" § 18. The forest commission shall take such measures as the department of public instruction, the regents of the university and the forest commission may approve,

" for awakening an interest in behalf of forestry in the  
" public schools, academies and colleges of the state, and  
" of imparting some degree of elementary instruction  
" upon this subject therein.

" Section 19. The forest commision shall, as soon as  
" practicable, prepare tracts or circulars of information  
" giving plain and concise advice for the care of woodlands  
" upon private lands, and for the starting of new planta-  
" tions upon lands that have been denuded, exhausted by  
" cultivation, eroded by torrents, or injured by fire, or  
" that are sandy, marshy, broken, sterile or waste, and  
" unfit for other use. These publications shall be fur-  
" nished without cost to any citizen of the State, upon  
" application, and proper measures may be taken for  
" bringing them to the notice of persons who would be  
" benefitted by this advice.

" Section 20. Every supervisor of a town in this State,  
" excepting within the counties mentioned in section seven  
" of this act, shall be *ex-officio* fire warden therein. But  
" in towns particularly exposed to damages from forest  
" fires, the supervisor may divide the same into two or  
" more districts, bounded as far as may be by roads,  
" streams of water, or dividing ridges of land or lot lines,  
" and he may, in writing, appoint one resident citizen in  
" each district as district fire warden therein. A descrip-  
" tion of these districts and the names of the district fire  
" wardens thus appointed shall be recorded in the office  
" of town clerk. The supervisor may also cause a map of  
" the fire district of his town to be posted in some public  
" place with the names of the district fire wardens ap-  
" pointed. The cost of each map, not exceeding five dol-  
" lars, may be made town charge; and the services of the  
" fire wardens shall also be deemed a town charge and  
" shall not exceed the sum of two dollars per day for the  
" time actually employed. Within the counties men-

"tioned in section seven of this act, such persons shall be  
"fire wardens as may from time to time be appointed by  
"the forest commission. The persons so appointed shall  
"act during the pleasure of the forest commission; and  
"there shall be applicable to them all the provisions of  
"this act, with reference to supervisors and district town  
"wardens. Upon the discovery of a forest fire, it shall  
"be the duty of the fire warden of the district, town or  
"county, to take such measures as may be necessary for  
"its extinction. For this purpose he shall have authority  
"to call upon any person in the territory in which he acts  
"for assistance, and any person shall be liable to a fine of  
"not less than five nor more than twenty dollars for re-  
"fusing to act when so called upon.

"Section 21. The forest commission, the forest warden,  
"the forest inspector, the foresters, and any other per-  
"sons employed by or under the authority of the forest  
"commission, and who may be authorized by the commis-  
"sion to assume such duty, shall within the counties  
"mentioned in section seven of this act, whenever the  
"woods in any such town shall be on fire, perform the  
"duties imposed upon, and in such case shall have the  
"powers granted to the justices of the peace, the super-  
"visors and the commissioner of highways of such town  
"by title fourteen of chapter twenty of part one of the  
"Revised Statutes, with reference to the ordering of per-  
"sons to assist in extinguishing fires or stopping their  
"progress; and any person so ordered by the forest com-  
"mission, the forest warden, the forest inspectors, the  
"foresters, or any of them, or any other person acting or  
"authorized as aforesaid who shall refuse or neglect to  
"comply with any such order shall be liable to the pun-  
"ishment prescribed by the said title.

"Section 22. No action for trespass shall be brought  
"by any owner of land for entry made upon his premises

" by persons going to assist in extinguishing a forest fire,  
" although it may not be upon his land.

" Section 23. The fire wardens, or the supervisor,  
" where acting in general charge, may cause fences to be  
" destroyed or furrows to be ploughed to check the running  
" of fires, and in cases of great danger, back-fires may be  
" set along a road or stream or other line of defense, to  
" clear off the combustible material before an advancing  
" fire.

" Section 24. The supervisor of every town of which  
" he is a fire-warden as aforesaid and in which a forest fire  
" of more than one acre in extent has occurred within a  
" year shall report to the forest commission the extent of  
" area burned over, to the best of his information, to-  
" gether with the probable amount of property destroyed,  
" specifying the value of timber, as near as may be, and  
" amount of cord wood, logs, bark or other forest product,  
" and of fencing, bridges and buildings that have been  
" burned. He shall also make inquiries and report as to  
" the causes of these fires, if they can be ascertained,  
" and as to the measures employed and found most ef-  
" fectual in checking their progress. A consolidated sum-  
" mary of these returns by counties and of the informa-  
" tion as to the same matter otherwise gathered by the  
" forest commission shall be included in the annual report  
" of the forest commission.

" Section 25. Every railroad company whose road  
" passes through waste or forest lands, or lands liable to  
" be overrun by fires within this state, shall twice in each  
" year cut and burn off or remove from its right of way  
" all grass, brush or other inflammable material, but under  
" proper care, and at all times when the fires thus set are  
" not liable to spread beyond control.

" Section 26. All locomotives which shall be run  
" through forest lands shall be provided, within one year

" from the date of this act, with approved and sufficient  
" arrangements for preventing the escape of fire from  
" their furnace or ash-pan, and netting of steel or iron  
" wire upon their smoke-stack to check the escape of  
" sparks of fire. It shall be the duty of every engineer  
" and fireman employed upon a locomotive, to see that  
" the appliances for the prevention of the escape of fire  
" are in use and applied, as far as it can be reasonably  
" and possibly done.

" Section 27. No railroad company shall permit its  
" employees to deposit fire-coals or ashes upon their  
" track in the immediate vicinity of woodlands or lands  
" liable to be overrun by fires, and in all cases where any  
" engineers, conductors or trainmen discover that fences  
" along the right of way, on woodlands adjacent to the  
" railroad, are burning, or in danger from fire, it shall be  
" their duty to report the same at their next stopping  
" place, and the person in charge of such station shall  
" take prompt measures for extinguishing such fires.

" Section 28. In seasons of drought, and especially  
" during the first dry time in the spring after the snows  
" have gone and before vegetation has revived, railroad  
" companies shall employ a sufficient additional number of  
" trackmen for the prompt extinguishment of fires. And  
" where a forest fire is raging near the line of their road  
" they shall concentrate such help and adopt such measures  
" as shall most effectually arrest their progress.

" Section 29. Any railroad company violating the pro-  
" visions or requirement of this act shall be liable to a fine  
" of one hundred dollars for each offense.

" Section 30. The forest commission shall, with as little  
" delay as practicable, cause rules for the prevention and  
" suppression of forest fires to be printed for posting in  
" school-houses, inns, saw-mills and other wood-working  
" establishments, lumber camps and other places, in such

" portions of the state as they may deem necessary. Any person maliciously or wantonly defacing or destroying such notices shall be liable to a fine of five dollars. It shall be the duty of forest agents, supervisors and school trustees to cause these rules, when received by them to be properly posted, and replaced when lost or destroyed.

" Section 31. Any person who shall wilfully or negligently set fire to, or assist another to set fire to any waste or forest lands belonging to the state or to another person, whereby the said forests are injured or endangered, or who suffers any fire upon his own land to escape or extend beyond the limits thereof, to the injury of the woodlands of another or of the state, shall be liable to a fine of not less than fifty dollars nor more than five hundred dollars, or to imprisonment of not less than thirty days nor more than six months. He shall also be liable in an action for all damages that may be caused by such fires; such action to be brought in any court of this state having jurisdiction thereof.

" Section 32. Fifteen thousand dollars is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the purposes of this act. And no liabilities shall be incurred by said forest commissioners in excess of this appropriation.

" Section 33. This act shall take effect immediately.

" Chap. 639, Laws of 1887.

" AN ACT to amend section seven of chapter two hundred and eighty-three of the laws of eighteen hundred and eighty-five, as amended by chapter two hundred and eighty of the laws of eighteen hundred and eighty-six, entitled 'An Act to establish a Forest Commission

" and to define its powers and duties, and for the preservation of forests.'

" Passed June 21, 1887; three fifths being present.

" *The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

" Section 1. Section seven of chapter two hundred and eighty-three of the laws of eighteen hundred and eighty-five, as amended by chapter two hundred and eighty of the laws of eighteen hundred and eighty-six, entitled " ' An act to establish a Forest Commission and to define its powers and duties, and for the preservation of forests,' is hereby amended so as to read as follows:

" Section 7. All the lands now owned, or which may hereafter be acquired by the State of New York, within the counties of Clinton, except the towns of Altona and Dannemora, Essex, Franklin, Fulton, Hamilton, Herkimer, Lewis, Saratoga, St. Lawrence, Warren, Washington, Greene, Ulster, Sullivan and Oneida shall constitute and be known as the Forest Preserve.

" Section 2. This act shall take effect immediately.

" **Chapter 37 of Laws of 1890.**

" **AN ACT** to authorize the purchase of lands located within such counties as include the forest preserve.

" Approved by the Governor, March 11, 1890. Passed, three-fifths being present.

" *The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

" Section 1. The forest commission, with the approval and concurrence of the commissioners of the land office, may purchase lands so located within such counties as include the forest preserve, as shall be available for the purposes of a state park, at a price not to exceed one

" dollar and fifty cents per acre, such approval and concurrence to be endorsed on a copy of the resolution of the said forest commission authorizing such purchase, and certified to by the clerk of said commissioners of the land office.

" Section 2. The forest commission may have such lands appraised by one or more appraisers, not to exceed three in number, to be appointed by that commission. The expenses of such appraisal shall be a per diem allowance to the appraisers, not to exceed three dollars per day for the time actually employed, and the necessary expenses incurred in each case, such expenses to be audited by the comptroller, and paid out of the funds appropriated by the legislature for the purposes of this act; but no purchase of lands shall be made in excess of previous appropriations for that purpose.

" Section 3. The sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated for the purposes of this act; and no liability shall be incurred by said forest commission in excess of this appropriation.

" Section 4. This act shall take effect immediately.

#### Chap. 707. Laws of 1892.

" AN ACT to establish the Adirondack park and to authorize the purchase and sale of lands within the counties including the forest preserve.

" Approved by the Governor, May 20, 1892. Passed, three-fifths being present.

" *The People of the State of New York represented in Senate and Assembly, do enact as follows:*

" Section 1. There shall be a state park established within the counties of Hamilton, Herkimer, St. Law-

"rence, Franklin, Essex and Warren, which shall be known as the Adirondack park, and which shall, subject to the provisions of this act, be forever reserved, maintained and cared for as ground open for the free use of all the people for their health or pleasure, and as forest lands necessary to the preservation of the headwaters of the chief rivers of the state, and a future timber supply.

"Section 2. For this purpose the forest commission shall have power, as herein provided, to contract for the purchase of land situated within the county of Hamilton; the towns of Newcomb, Minerva, Schroon, North Hudson, Keene, North Elba, St. Armand and Wilmington, in the county of Essex; the towns of Harrietstown, Santa Clara, Altamont, Waverly and Brighton in the county of Franklin: the town of Wilmurt in the county of Herkimer; the towns of Hopkinton, Colton, Clifton, and Fine, in the county of St. Lawrence; and the towns of Johnsburg, Stony Creek and Thurman, in the county of Warren.

"Section 3. In any case where lands are situated within the towns specified in section two, the purchase of which lands will, in the opinion of the forest commission, be advantageous to the state, but which can not, as shall appear to the satisfaction of the forest commission, be bought on advantageous terms, unless subject to leases or restrictions or to the right to remove certain timber as hereinafter mentioned, the forest commission may make a contract for the purchase of such lands, providing that the contract and the deed or deeds to be made in pursuance thereof shall be subject to such leases, restrictions or right. But no lands shall be so purchased subject to any right to remove hard wood timber, or any trees of soft wood with a diameter of less than ten inches at the height of three feet from the ground,

" or subject to any rights, leases or restrictions, or the  
" right to remove any timber after the period of ten years  
" from the date of the conveyance.

" Section 4. The forest commission shall have power,  
" from time to time, due notice having been given, to con-  
" tract to sell and convey any portion of the lands within  
" so much of the forest preserve as is now or hereafter may  
" be situated within the counties of Clinton, Fulton,  
" Lewis, Oneida, Saratoga, Washington, St. Lawrence,  
" Franklin (except the town of Harrietstown), Herkimer  
" (except the town of Wilmurt), Essex (except the towns  
" of Newcomb and North Elba), the town of Hope, in the  
" county of Hamilton, and the county of Warren, (ex-  
" cepting however, therefrom, all islands in Lake George  
" and all land upon the shore thereof), the ownership of  
" which by the state is not, in the opinion of the forest  
" commission needed to promote the purpose sought by  
" this act, or by chapter two hundred and eighty-three  
" of the laws of eighteen hundred and eighty-five. The  
" proceeds of all such sales, as in this section provided,  
" shall be paid to the treasurer of the state, and shall be  
" held by him in a separate fund and as a special deposit,  
" which shall at all times be available to the forest com-  
" mission for the purpose of purchasing lands situated  
" within the towns mentioned in section two of this act,  
" at such price per acre as may be determined by the  
" forest commission and approved by the commissioners of  
" the land office as hereinafter provided.

" Section 5. All conveyances of lands belonging to the  
" state which are to be delivered in pursuance of any con-  
" tract authorized by section four shall be executed by the  
" comptroller, and may contain such restrictions, reserva-  
" tions or covenants as the forest commission shall deem  
" to be promotive of the purposes sought by this act or by  
" chapter two hundred and eighty-three, laws of eighteen

" hundred and eighty-five. No contract made in pursuance  
" or under the authority of this act shall take effect until  
" the same shall have been approved by the commissioners  
" of the land office, such approval to be appended to the  
" copy of the resolution of the forest commission authoriz-  
" ing such contract, and certified by the clerk of the com-  
" missioners of the land office.

" Section 6. Every conveyance executed in pursuance of  
" this act shall be certified by the attorney-general to be  
" in conformity with the contract, and shall otherwise be  
" approved by him as to form before the acceptance or  
" delivery thereof. Every conveyance to be received by  
" the forest commission, and executed in pursuance or  
" under the authority of this act, shall be made to the  
" people of the state of New York, as grantee, and shall  
" be recorded in the proper county or counties, and shall  
" after such record, be delivered by the forest commission  
" to the commissioners of the land office to be treated as  
" part of their archives.

" Section 7. Payment for the purchase of land,  
" authorized by this act, shall be made upon the cer-  
" tificate of the forest commission and the audit of the  
" comptroller from moneys appropriated by this act for  
" the purchase of land or for moneys received from the  
" sale of lands as provided in section four. Such expenses  
" as may be necessarily incurred by the forest commission  
" in the preliminary examination of lands purchased or  
" sold under the authority of this act, or in the examina-  
" tion of title of lands purchased under this act, and all  
" other expenses incidental to the conveyances and pur-  
" chases so made shall be paid by the forest commission  
" from the appropriations made from time to time for the  
" purpose of such purchases or from the fund established  
" from the proceeds of the sale of lands as provided in  
" section four.

"Section 8. All lands now owned, or which may hereafter be acquired by the state within the towns mentioned in section two of this act (except such lands, in border towns, as may be sold in accordance with the provisions of section four) shall constitute the Adirondack park. The forest commission shall have the care, custody, control, and superintendence of the same, and shall have within the same and with reference thereto and every part thereof, and with reference to any acts committed thereon and persons committing the same, all the control, powers, duties, rights of action, and remedies now belonging or which shall hereafter belong to the forest commission or the commissioners of the land office, within, or with reference to the forest preserve or any part thereof, or with reference to any acts committed therein, or persons committing the same. The forest commission shall have power to prescribe and to enforce ordinances or regulations for the government and care of the Adirondack park, not inconsistent with the laws of the state of New York, or for the licensing or regulation of guides or other persons who shall be usually engaged in business thereon; to lay out paths and roads in the manner prescribed by law; to appoint the superintendent, inspectors, foresters, and all other officers or employes who are to be engaged in the care or administration of the park, and to fix their compensation, the same to be payable, however, only out of the appropriations made from time to time, for the expenses of the forest commission.

"Section 9. The forest commission shall have power to lease from time to time, as it may determine, tracts of land within the limits of the Adirondack park, not exceeding five acres in any one parcel, to any person, for the erection of camps or cottages for the use and accommodation of campers, such leases to be general in form

" except as to the term and amount of rental, and the  
" term not to exceed five years, and the leases to contain  
" strict conditions as to the cutting and protection of tim-  
" ber, the prevention of fires, and a reservation of a right  
" of passage over the same for travelers at all proper and  
" reasonable times, and to contain a covenant on the part  
" of the lessee or lessees to observe the ordinances or regu-  
" lations of the forest commission, theretofore prescribed  
" or thereafter to be prescribed, as the same may be from  
" time to time. No exclusive fishing or hunting privilege  
" shall be granted to any such lessees.

" Section 10. Except as in this act otherwise provided,  
" the Adirondack park shall for all purposes, be deemed  
" a part of the forest preserve. All laws for the protec-  
" tion of the forest preserve shall be applicable to the  
" Adirondack park, except as in this act otherwise pro-  
" vided; and the forest commission may conduct the same  
" prosecutions, and institute and maintain the same pro-  
" ceedings, which it is, or shall be, entitled to conduct,  
" institute or maintain with reference to any portion of  
" the forest preserve; and all acts forbidden upon the  
" forest preserve are, and shall be deemed forbidden within  
" the Adirondack park except as herein otherwise pro-  
" vided; and all violations of law upon the Adirondack  
" park shall be subject to the same punishments and  
" penalties as if such violation were committed upon any  
" part of the forest preserve.

" Section 11. The foresters and other employes of the  
" forest commission shall, when so directed by the forest  
" commission, act as game and fish protectors; and as  
" such they shall have all powers within the Adirondack  
" park which game and fish protectors have, or shall have,  
" under chapter five hundred and seventy-seven of the  
" laws of eighteen hundred and eighty-eight, and any law  
" hereafter to be enacted; and they shall from time to

" time make such report to the commissioner of fisheries  
" as that board may require. Nothing in this act con-  
" tained shall be construed to premit any violation within  
" the Adirondack park of the game and fish laws of the  
" state heretofore or hereafter to be enacted, or to restrict  
" or alter as to such park any of the prohibitions or penal-  
" ties prescribed or hereafter to be prescribed by such fish  
" and game laws. It shall be the duty of the forest com-  
" mission, with the concurrence and approval of the com-  
" missioners of fisheries, to provide for the enforcement  
" within the Adirondack park of such fish and game laws  
" by such means as the forest commission shall deem wise,  
" in addition to such other means as are or shall be pro-  
" vided by law.

" Section 12. The forest commission shall include in its  
" annual report an account of its proceedings with refer-  
" ence to the Adirondack park, and shall make such  
" recommendations with reference thereto as it shall deem  
" wise. The forest commission shall state also in its  
" annual report the number of acres purchased and sold  
" during the year under the provisions of this act, the  
" locality of the same, the prices paid or received, and all  
" other information of importance connected with such  
" transfers; and shall state the amount of money required  
" in the next fiscal year for the purchase of lands and for  
" the expenses of the park.

" Section 13. Chapter four hundred and seventy-five of  
" the laws of eighteen hundred and eighty-seven, and all  
" acts and parts of acts inconsistent with this act are, so  
" far as they are inconsistent, hereby repealed.

" Section 14. This act shall take effect immediately.

**Chapter 332, Laws 1893.**

“ AN ACT in relation to the forest preserve and Adirondack park, constituting articles six and seven of chapter forty-three of the general laws.

“ Approved by the Governor April 7, 1893. Passed, three-fifths being present.

“ *The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

“ **ARTICLE VI.**

“ **FOREST PRESERVE.**

“ Section 100. Forest preserve.

“ 101. Forest commission.

“ 102. Powers and duties.

“ 103. Sale of timber in forest preserve.

“ 104. Accounts and annual report of forest commission.

“ 105. Partition of lands.

“ 106. Taxation of forest preserve.

“ 107. Duties of railroad companies.

“ 108. Powers and duties of certain officers in case of fire.

“ 109. Supervisors to be town protectors of land.

“ 110. Supervisors ex officio fire wardens.

“ 111. Supervisors to report fires.

“ 112. Actions for trespasses upon forest preserve.

“ 113. Penalty for setting fire to forest lands.

“ 114. Arrest of offenders without warrant.

“ 115. Deer parks in the Catskill region.

“ 116. Powers and duties of commissioner of agriculture as to forest preserve.

“ Section 100. FOREST PRESERVE. The forest preserve shall include the lands now owned or hereafter acquired

" by the state within the counties of Clinton, except the  
" towns of Altona and Dannemora, Delaware, Essex,  
" Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida,  
" Saratoga, St. Lawrence, Warren, Washington, Greene,  
" Ulster and Sullivan, except

" 1. Lands within the limits of any village or city and  
" 2. Lands, not wild lands, acquired by the state on  
" foreclosure of mortgages made to the commissioners for  
" loaning certain moneys of the United States usually  
" called the United States deposit fund.

" Section 101. FOREST COMMISSION. There shall be a  
" forest commission consisting of five persons to be known  
" as the forest commissioners, appointed by the governor  
" by and with the advice and consent of the senate and  
" holding office for the term of five years. The commis-  
" sioners shall serve without compensation but shall be  
" paid for the reasonable expenses incurred in the per-  
" formance of their official duties not to exceed the sum  
" of five hundred dollars in any year to any commissioner.  
" The superintendent, assistant superintendent, the two  
" inspectors of forests and the secretary and clerks now  
" employed by the forest commission, shall continue on  
" the same terms and conditions until such employment  
" shall be terminated or modified by the forest commission.

" Section 102. POWERS AND DUTIES. The forest com-  
" mission shall :

" 1. Have the care, custody, control and superintend-  
" ence of the forest preserve.

" 2. Maintain and protect the forests in the forest pre-  
" serve and promote as far as practicable the further  
" growth of the forest therein.

" 3. Have charge of the public interests of the state  
" with regard to forestry and tree planting and especially  
" with reference to forest fires in every part of the state.

" 4. Possess all the powers relating to forest preserve  
" which were vested in the commissioners of the land office  
" and in the comptroller on May fifteen, eighteen hundred  
" and eighty-five.

" 5. Prescribe rules and regulations affecting the whole  
" or any part of the forest preserve and for its use, care  
" and administration and alter or amend the same; but  
" neither such rules or regulations nor anything contained  
" in this article shall prevent or operate to prevent the  
" free use of any road, stream or water as the same may  
" have been heretofore used, or as may be reasonably  
" required in the prosecution of any lawful business.

" 6. Employ a superintendent, assistant superintendent,  
" two forest inspectors, twelve foresters and such clerical  
" force and agents as they may deem necessary, and fix  
" their compensation, but the expenses and salaries of  
" such employees shall not exceed in the aggregate, with  
" the other expenses of the commission the sum appro-  
" priated therefor by the legislature, and the amount  
" allowed to each forester for salary shall not exceed the  
" sum of seventy-five dollars a month.

" 7. Take such measures as in the judgment of the com-  
" missioners may be proper, and the state superintendent  
" of public instruction and the regents of the university may  
" approve, for awakening an interest in behalf of forestry  
" in the common schools, academies and colleges of the  
" state, and of imparting elementary instruction on such  
" subject therein; and prepare and distribute the tracts  
" and circulars of information, giving plain and concise  
" instructions for the care of private wood lands and for  
" the growth of new forests upon lands that have been  
" denuded, exhausted by cultivation, eroded by torrents,  
" or injured by fire, or that are sandy, marshy, broken,  
" sterile, or waste and unfit for other use. These publica-  
" tions shall be furnished without cost to any citizen of

" the state on application, and proper measures may be  
" taken for bringing them to the notice of persons who  
" would be benefited thereby.

" 8. Cause rules for the prevention and suppression of  
" forest fires to be printed for posting in school-houses,  
" inns, saw-mills and other wood-working establishments,  
" lumber camps and other places in such portions of the  
" state as they may deem necessary. Forest inspectors,  
" foresters, firewardens, supervisors and school trustees  
" shall cause these rules when received by them, to be  
" properly posted and replaced when lost or destroyed.  
" Any person maliciously or wantonly defacing or destroy-  
" ing any such notice shall forfeit to the people of the  
" state, the sum of five dollars for every such offense.

" Section 103. SALE OF TIMBER ON FOREST PRESERVE.  
" The forest commissioners may sell any spruce and tama-  
" rack timber, which is not less than twelve inches in  
" diameter at a height of three feet above the ground,  
" standing in any part of the forest preserve, and poplar  
" timber of such size as the forest commission may deter-  
" mine, and the proceeds of such sales shall be turned  
" over to the state treasurer, by whom they shall be placed  
" to the credit of the special fund established for the pur-  
" chase of lands within the Adirondack park.

" Section 104. ACCOUNTS AND ANNUAL REPORT OF  
" FOREST COMMISSION. All income derived from state  
" forest lands shall be paid over by the forest commission  
" to the treasury of the state, and a strict account shall  
" be kept of all receipts and expenses of the commission,  
" which account shall be audited by the comptroller.  
" The commission shall annually, in the month of Jan-  
" uary, make a written report to the legislature of their  
" receipts and expenses, and of all their proceedings, with  
" such recommendations of further legislative or official  
" action as they may deem proper.

"Section 105. PARTITION OF LANDS. Whenever the state owns an undivided interest with any person in lands of the forest preserve or holds and is in possession of such lands as joint tenant or tenant in common with any person who has a freehold estate therein, the attorney-general shall on the request of the forest commission, bring an action in the name of the people of the state, for the actual partition of such land; and on the written consent of the forest commission any such person may maintain an action for the actual partition of such land in the same manner as if the state were not entitled to exemption from legal proceedings, and service of process in such action upon the attorney-general shall be deemed service upon the state. Such actions, the proceedings and judgment therein and the proceedings under the judgment shall be according to the practice at the time prevailing in actions of partition and shall have the same force and effect as in other actions, except that no costs against the state shall be allowed in such actions and no sale of such lands shall be adjudged therein. The forest commission may without action, but with the consent of the comptroller, agree with any person or persons owning lands within the forest preserve jointly or as tenants in common, with the state for the partition of such lands, and on such agreement and consent, the comptroller shall make on behalf of the people of the state, any conveyance necessary or proper in such partition, and such conveyance shall be forthwith recorded as now provided by law as to conveyances made by the commissioners of the land office.

"Section 106. TAXATION OF FOREST PRESERVE. All wild or forest land within the forest preserve shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year, the assessors of

"the town within which the land so belonging to the state  
"are situated shall file in the office of the comptroller and  
"of the forest commission, a copy of the assessment-roll  
"of the town which in addition to the other matter now  
"required by law shall state and specify which and how  
"much, if any, of the lands assessed are forest lands, and  
"which and how much, if any, are lands belonging to the  
"state; such statements and specifications to be verified  
"by the oaths of a majority of the assessors. The comp-  
"troller shall thereupon and before the first day of Sep-  
"tember following, and after hearing the assessors and  
"forest commission if they or any of them so desire,  
"correct or reduce any assessment of state land which  
"may be in his judgment an unfair proportion to the  
"remaining assessment of land within the town, and shall  
"in other respects approve the assessment and communi-  
"cate such approval to the assessors. No such assessment  
"of state lands shall be valid for any purpose until the  
"amount of assessment is approved by the comptroller,  
"and such approval attached to and deposited with the  
"assessment-roll of the town and therewith delivered by  
"the assessors of the town to the supervisor thereof or  
"other officer authorized to receive the same from the  
"assessors. No tax for the erection of a school-house or  
"opening of a road shall be imposed on the state lands  
"unless such erection or opening shall have been first  
"approved in writing by the forest commission. Payment  
"of the lawful and just amount of the taxes imposed under  
"this section on lands so belonging to the state shall in  
"every year be made by the treasurer of the state, on the  
"certificate of the comptroller, by allowing to the treasurer  
"of the county in which such lands are situated a credit  
"of the amount of such taxes due on such lands payable  
"by such county treasurer in such year to the state for  
"state taxes; but no fees shall be allowed by the comp-

"troller to the county treasurers in adjusting their accounts  
"for such portion of the state tax so paid.

"**Section 107. DUTIES OF RAILROAD COMPANIES.** Every railroad company whose road passes through waste or forest lands or lands liable to be overrun by fires within the state, shall twice in each year cut and remove from its right of way all grass, brush or other inflammable materials, but under proper care and at proper times when fire, if set, can be kept under control. All locomotives which run through forest lands shall be provided with approved and sufficient arrangements for preventing the escape of fire from their furnaces or ashpans and with netting of steel or iron wire upon their smoke stacks to prevent the escape of sparks of fire and every engineer and fireman employed upon a locomotive shall see that the appliances to prevent the escape of fire are in use and applied as far as it can be reasonably and practically done. No railroad company shall permit its employes to deposit fire coals or ashes upon their track in the immediate vicinity of woodlands, or lands liable to be overrun by fires, and where any engineers, conductors or trainmen discover that fences or other material or substances along the right of way upon wood lands adjacent to the railroad are burning, or in danger from fire, they shall report the same at their next stopping place, and the person in charge of such station shall take prompt measures to extinguish such fires and shall immediately notify the nearest firewarden or forester. In seasons of drought and especially during the first dry time in the spring after the snows have gone and before vegetation has revived, railroad companies shall employ a sufficient number of trackmen for the prompt extinguishment of fires; and where a forest fire is raging near the line of their road, they shall concentrate such help and adopt such measures as shall most effectually arrest it pro-

"ress. If any railroad company or any of its employes  
"violate any provision of this section the company shall  
"forfeit to the people of the state the sum of one hundred  
"dollars for every such violation.

"Section 108. POWERS AND DUTIES OF CERTAIN  
"OFFICERS IN CASE OF FIRE. The forest commission,  
"forest superintendent, forest inspector, foresters and  
"other persons employed by or under the authority of  
"the forest commission and who may be authorized by  
"the commission to assume such duty, shall in a town  
"within or a part of the forest preserve, whenever the  
"woods in any such town shall be on fire, perform the  
"duty imposed on them and in such case shall have the  
"powers granted to justices of the peace, the super-  
"visors and commissioners of highways with reference to  
"the ordering of persons to assist in extinguishing fires  
"or stopping their progress. The fire warden, or the  
"supervisor, where acting in general charge, may cause  
"fences to be destroyed or furrows to be ploughed, to  
"check the running fire, or in case of great danger, back  
"fires may be set along a road or stream or other line of  
"defense, to clear off the combustible material before an  
"advancing fire. No action for trespass shall be brought  
"by any owner of land for entry made upon his premises  
"by persons going to assist in extinguishing a forest fire  
"although such fire may not be upon his land. The  
"compensation for services of persons who may assist  
"in extinguishing forest fires shall be a town charge and  
"and shall not exceed the sum of two dollars per day for  
"each person employed; but all bills for such services  
"must be approved by the fire warden of the town in  
"which the fire occurred before payment shall be made.

"Section 109. SUPERVISORS TO BE TOWN PROTECTORS  
"OF LANDS. The supervisor of every town in the state

" not within or a part of the forest preserve in which wild  
" or forest lands belonging to the state are located shall  
" be, by virtue of his office, the protector of such lands,  
" subject to the instructions he may receive from the  
" forest commission. He shall report to the district  
" attorney for prosecution any acts of spoliation or injury  
" that may be done, and such district attorney shall insti-  
" tute proceedings for the prevention of further trespass  
" and for the recovery of all damages committed, with  
" costs of prosecution. The supervisors shall report their  
" proceedings therein to the forest commission. In towns  
" where the forest commission deem it necessary, they  
" may serve a notice upon the supervisor, requiring him  
" to appoint one or more forest guards, and if more than  
" one in a town, the district of each shall be properly  
" defined. The guards so appointed shall have such  
" powers, perform such duties and receive such pay as  
" the forest commission may determine.

" **Section 110. SUPERVISORS EX-OFFICIO FIRE WARDENS.**  
" Every supervisor of a town in this state, in which there  
" are no wild or forest lands of the forest preserve, and in  
" which no firewarden is appointed by the forest commis-  
" sion, shall be ex-officio firewarden therein, but the  
" supervisor may divide towns particularly exposed to  
" damages from forest fires into two or more districts,  
" bounded as far as may be by roads, streams of water or  
" dividing ridges of land or lot lines, and appoint in  
" writing one resident citizen in each district as district  
" firewarden therein. A description of these districts and  
" the names of the district firewardens thus appointed  
" shall be recorded in the office of the town clerk. The  
" supervisor may also cause a map of the fire districts of  
" his town to be posted in some public place with the  
" names of the district firewardens appointed. The cost  
" of such map, not exceeding five dollars, shall be a town

" charge and the services of the firewarden shall also be  
" deemed a town charge and shall not exceed the sum of  
" two dollars per day for the time actually employed.  
" Within a town in which there are wild or forest lands  
" of the forest preserve, and in such other towns in the  
" counties mentioned in section one hundred of this  
" chapter, as the forest commission may designate, such  
" persons shall be firewardens as may, from time to time.  
" be appointed by the forest commission and shall act  
" during the pleasure of such commission and all the  
" provisions of this article with reference to supervisors  
" and district town wardens shall be applicable to them.  
" On the discovery of a forest fire or a fire in any woods,  
" the firewarden of the district, town or county in which  
" it shall be, shall take such measures as shall be neces-  
" sary for its extinction, and for this purpose he may call  
" on any person in the territory in which he acts or in its  
" vicinity for assistance, and any person refusing to act  
" when so called on, shall forfeit to the people of the  
" state the sum of ten dollars. Any justice of the peace  
" or commissioner of highways of the town in which any  
" such fire shall be, shall act as firewarden with respect  
" to any such fire, if the firewardens of the district, tow-  
" or county are not taking such measures for its ex-  
" tinguishment.

" Section 111. SUPERVISORS TO REPORT FIRES. The  
" firewarden of every town in which a forest fire of more  
" than one acre in extent has occurred within a year, shall  
" report to the forest commission the extent of area burned  
" over to the best of his information, together with the  
" probable amount of property destroyed, specifying the  
" value of timber, as near as may be, and amount of cord-  
" wood, logs, bark, or other forest product, and of fences,  
" bridges and buildings that have been burned. He shall  
" make inquiries and report as to the causes of such fires,

" if ascertainable, and as to the measures employed and  
" found most effectual in checking their progress. A con-  
" solidated summary of these returns by counties and of  
" the information as to the same matter otherwise gathered  
" by the forest commission shall be included in their  
" annual report.

" **Section 112. ACTIONS FOR TRESPASSES UPON FOREST  
" PRESERVE.** The forest commission may bring in the  
" name of the people of the state any action to prevent  
" trespass upon or injury to the forest preserve and recover  
" damages therefor or to recover lands properly forming  
" part of the forest preserve but occupied or held by per-  
" sons not entitled thereto, or for the maintenance and  
" protection of the forest preserve, which any owner of  
" lands would be entitled to bring; or for cutting or carry-  
" ing away, or causing to be cut or assisting to cut, any  
" tree or timber within the forest preserve or any bark  
" thereupon, or removing any tree, timber or bark, or any  
" portion thereof from such forest preserve. Every person  
" violating the provisions of this section, relating to the  
" cutting or carrying away any timber, trees or bark, shall  
" forfeit to the state the sum of twenty-five dollars for  
" every tree cut or carried away by him or under his direc-  
" tion. The forest commission may, with the consent of  
" the attorney-general and comptroller, employ attorneys  
" and counsel to prosecute any such action or to defend  
" any action brought against the commission or any of its  
" members or subordinates arising out of their or his  
" official conduct with relation to the forest preserve.  
" Any attorney or counsel so employed shall act under  
" the direction of and in the name of the attorney-general.  
" Where such attorney or counsel is not so employed, the  
" attorney-general shall prosecute and defend such actions.  
" A preliminary or final injunction shall, on application in  
" an action brought by or at the instance of the forest

" commission, be granted restraining any act of trespass,  
" waste or destruction upon the forest preserve. All such  
" actions for the prosecution shall be brought in the county  
" where the trespass is alleged to have been committed.

" **Section 113. PENALTY FOR SETTING FIRE TO FOREST LANDS.** Any person who shall wilfully or negligently  
" set fire to, or assist another to set fire to any waste or  
" forest lands belonging to the state or to another person,  
" whereby such forests are injured or endangered; or who  
" suffers any fire upon his own lands to escape or extend  
" beyond the limits thereof to the injury of the wood lands  
" of another or of the state, shall forfeit to the state for  
" every such offense not less than fifty nor more than five  
" hundred dollars, and be liable to the person injured for  
" all damages that may be caused by such fires.

" **Section 114. ARREST OF OFFENDERS WITHOUT WARRANT.** The forest superintendent, inspectors, foresters  
" and other persons acting upon the forest preserve under  
" the written employment of the superintendent or of the  
" forest commission, may, without warrant, arrest any  
" person found upon the forest preserve violating any of  
" the provisions of this article and forthwith take the per-  
" son so arrested before a magistrate having jurisdiction  
" to issue warrants in such cases and there make or pro-  
" cure to be made a complaint in writing, on which com-  
" plaint the magistrate shall act as the case may require.

" **Section 115. DEER PARKS IN THE CATSKILL REGION.**  
" The forest commission shall set apart tracts of land not  
" exceeding three of such size as they may deem proper,  
" belonging to the state in the Catskill region, now con-  
" stituting a part of the forest preserve, for the purpose  
" of breeding deer and wild game. The commission shall  
" purchase and turn out upon such lands such deer or  
" other game as they may think proper, and establish all

" proper rules for the protection of such land and the "game thereupon. No game shall be killed, pursued, "trapped, or in any way destroyed within the limits of "such land so set apart for the period of five years from "the time that such lands shall have been so set apart. "The forest commission may receive private subscriptions "of money and expend the same for the purposes specified in this section.

" **Section 116. POWERS AND DUTIES OF COMMISSIONER OF AGRICULTURE AS TO FOREST PRESERVE.** On the expiration of the terms of office of the forest commissioners appointed pursuant to this chapter, the forest commission shall cease and determine, and all its powers and duties shall devolve on the commissioner of agriculture.

### " **ARTICLE VIII.**

#### " **ADIRONDACK PARK.**

- " Sections 120. Adirondack Park.
- " 121. Powers and duties of forest commission.
- " 122. Contracts and conveyances.
- " 123. Proceeds of lands sold and payment "for lands purchased.
- " 124. Foresters and employes to act as game "protectors.
- " 125. Annual report.
- " 126. Laws revealed.\*
- " 127. When to take effect.

" **Section 120. ADIRONDACK PARK.** All lands now owned or hereafter acquired by the State within the county of Hamilton; the towns of Newcomb, Minerva, Schroon, North Hudson, Keene, North Elba, Saint Ar-

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\* So in the original.

" mand and Wilmington, in the county of Essex; the  
" towns of Harrietstown, Santa Clara, Altamont, Waverly  
" and Brighton, in the county of Franklin; the town  
" of Wilmurt, in the county of Herkimer; the towns of  
" Hopkington, Colton, Clifton and Fine, in the county of  
" Saint Lawrence, and in the towns of Johnsburgh, Stony  
" Creek and Thurman, and the islands in Lake George,  
" in the county of Warren, except such lands as may be  
" sold as provided in this article, shall constitute the Adi-  
" rondack park. Such park shall be forever reserved,  
" maintained and cared for as ground open for the free  
" use of all the people for their health and pleasure and  
" as forest lands, necessary to the preservation of the  
" headwaters of the chief rivers of the State, and a future  
" timber supply; and shall remain part of the forest pre-  
" serve.

" Section 121. POWERS AND DUTIES OF FOREST COM-  
" MISSION. The forest commission shall have the care,  
" custody, control and superintendence of the Adirondack  
" park, and within the same and with reference thereto  
" and to acts committed therein and to persons commit-  
" ting the same, all the control, powers, duties, rights of  
" action and remedies belonging to such commission or  
" the commissioners of the land office within and with  
" reference to the forest preserve as to acts committed  
" therein and persons committing the same. The forest  
" commission shall have power:

" 1. To contract as herein provided for the purchase of  
" land situated within the bounds of the park as defined  
" in the preceding section; if any such lands can not be  
" purchased on advantageous terms unless subject to  
" leases or restrictions or the right to remove soft wood  
" timber, the contract may provide accordingly, but not  
" for any such right, lease or restriction after ten years  
" from the date of the contract, nor for the right to remove

"any such trees with a diameter of less than twelve inches  
"at the height of three feet from the ground.

"2. To contract as herein provided, on giving notice by  
"publication for at least thirty days in at least two news-  
"papers published in the county where the lands are situ-  
"ated, to sell and convey any part of the forest preserve  
"within the counties of Clinton, Fulton, Lewis, Oneida,  
"Saratoga, Washington, Saint Lawrence, Franklin,  
"(except the town of Harrietstown), Herkimer (except  
"the town of Wilmurt), Essex (except the towns of New-  
"comb and North Elba) and Warren (except the islands  
"in Lake George and land upon the shore thereof), the  
"ownership of which is not in the opinion of the com-  
"mission needed to promote the purposes of this or the  
"preceding article. All such sales shall be made on sealed  
"bids and to the highest bidder; but the commissioners  
"must reserve the right to reject all bids.

"3. To contract with owners of land situated within  
"the bounds of the part that such lands may become  
"part of the park subject\* to the provisions of this arti-  
"cle, in consideration of the exemption of such lands  
"from taxation for state and county purposes which con-  
"tract shall contain a provision that the owners of such  
"land and their grantees shall refrain forever from remov-  
"ing any of the timber thereupon except spruce, tamarack  
"or poplar timber twelve inches in diameter at a height  
"of three feet above the ground or fallen, burned or  
"blighted timber and such other and further conditions  
"as to the right of occupancy of such lands by such own-  
"ers or their grantees as may be equitable. Such con-  
"tract may also reserve to the owners of such forest lands  
"and their grantees the privilege of clearing portions of  
"such lands for agricultural or domestic purposes under  
"regulations to be prescribed by the forest commissioners,

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\* So in the original.

" but no such privilege shall give to the owners or grantees  
" of said lands, the right to clear more than one acre  
" within the boundary of each one hundred acres covered  
" by said contract.

" 4. To lease from time to time for a term not longer  
" than five years, land within the forest preserve, not  
" more than five acres in one parcel to any person, for  
" the erection of camps or cottages for the use and accom-  
" modation of campers. Such leases shall contain strict  
" conditions as to the cutting and protection of timber  
" and the prevention of fires, a reservation for travelers of  
" the right of passage over the land leased at all proper  
" and reasonable times and a covenant on the part of the  
" lessee to observe all ordinances or regulations of the  
" forest commission theretofore or thereafter to be pre-  
" scribed; and no exclusive privilege of fishing or hunt-  
" ing shall be granted to any person. All revenues re-  
" ceived from such leases shall be paid into the state  
" treasury and shall be placed to the credit of the special  
" fund established for the purchase of lands within the  
" Adirondack park.

" 5. To prescribe and enforce ordinances and regula-  
" tions for the government and care of the park and for  
" the licensing or regulation of guides or other persons  
" engaged in business therein.

" 6. To lay out paths and roads in the park.

" 7. To sell the standing spruce, tamarack and poplar  
" timber, the fallen timber and the timber injured by  
" blight or fire, or any of the state forest lands under  
" such regulations and restrictions as the forest commis-  
" sion may prescribe, provided, however, that no such  
" standing timber except poplar shall be sold which shall  
" measure twelve inches or less in diameter at least three  
" feet from the ground. All proceeds from such sales  
" shall be turned over to the state treasurer, by whom

"they shall be placed to the credit of the special fund  
"established for the purchase of land within the Adiron-  
"dack park.

"Section 122. CONTRACTS AND CONVEYANCES. A  
"contract mentioned in this article shall not take effect  
"until approved by the commissioners of the land office;  
"a certificate of which approval, certified by the clerk of  
"said commissioners shall be attached to the copy of the  
"resolution of the forest commission authorizing such con-  
"tract. Every conveyance mentioned in this article shall  
"be certified by the attorney-general to be in conformity  
"with the contract and approved by him as to form before  
"the acceptance or delivery thereof; those to be received  
"by the commission shall be made to the people of the  
"state, recorded in the proper county and after record  
"delivered to the commissioners of the land office as a  
"part of their archives; those for land sold by the state  
"shall be executed by the comptroller and may contain  
"any restrictions, reservations or covenants which the  
"commission deem proper to promote the purposes of this  
"or the preceding article.

"Section 123. PROCEEDS OF LANDS SOLD AND PAYMENT  
"FOR LANDS PURCHASED. The proceeds of lands sold under  
"this article shall be paid to the state treasurer and held  
"by him as a separate fund and special deposit at all  
"times available for the purchase of other lands under  
"this article. Payment for such purchases and for ex-  
"penses, necessarily incurred by the commission in the  
"preliminary examinations of lands purchased or sold  
"under authority of this article, or in the examination of  
"titles of lands so purchased, or otherwise necessarily  
"incidental to such purchases or conveyances, may be  
"made from such fund or from any moneys appropriated  
"therefor on the certificate of the commission and audit  
"of the comptroller.

"Section 124. FORESTERS AND EMPLOYES TO ACT AS GAME PROTECTORS. The foresters and other employes of the commission shall, when so directed by the commission, act as game protectors, and possess all powers within the park, conferred on such protectors by law; they shall make such reports to the commissioners of fisheries as that commission from time to time may require. The forest commission, with the approval of the commissioners of fisheries, shall provide for the enforcement of the game law within the park by such lawful means as such commission deem wise, in addition to such other means as are provided by law.

"Section 125. ANNUAL REPORT. The forest commission shall include in its annual report an account of its proceedings with reference to the park, including a statement of the number of acres of land purchased or sold during the year, the locality thereof, the price paid or received, the amount of timber sold and the prices received therefor, the revenue from leases, and all other information of importance connected with such transfers and transactions; and shall state the amount of money required in the next fiscal year for the purchase of lands and expenses of the park, and make such recommendations with reference thereto as it deems wise.

"Section 126. LAWS REPEALED. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

"Section 127. WHEN TO TAKE EFFECT. This chapter shall take effect immediately.

**" SCHEDULE OF LAWS REPEALED.**

<b>" REVISED STATUTES.</b>		<b>SECTIONS</b>
<b>" PART 1, CHAPTER 17, TITLE 3.</b>		<b>1-4</b>
<b>" LAWS OF.</b>	<b>CHAPTER.</b>	<b>SECTIONS.</b>
" 1841	169	all, except §§ 3 & 6
" 1844	336	all
" 1848	299	all, except §§ 3 & 6
" 1869	167	all
" 1878	134	all
" 1879	306	all
" 1880	592	all
" 1881	300	all
" 1882	215	all
" 1882	238	all
" 1882	246	all
" 1883	13	all
" 1884	202	all
" 1884	418	all
" 1884	474	all
" 1885	183	all, except § 26
" 1885	283	all
" 1885	127*	all
" 1885	458	all
" 1886	280	all
" 1886	577	all, except that part of § 6 design- ated as § 24
" 1887	155	all
" 1887	223	all
" 1887	403	all
" 1887	430	all
" 1887	475	all
" 1887	562	all
" 1887	583	all
" 1888	286	all

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\* So in the original.

“ LAWS OF	CHAPTER.	SECTIONS.
“ 1888	298	all
“ 1888	520	all
“ 1888	550	all
“ 1889	24	all
“ 1889	148	all
“ 1889	515	all
“ 1889	538	all
“ 1890	8	all
“ 1891	140	all
“ 1891	354	1, 2
“ 1892	501	all
“ 1892	707	all

“ Chap. 395,” Laws 1895.

#### “ ARTICLE XII.

##### “ FOREST PRESERVE.

- “ Section 270. Forest preserve.
- “ 271. Powers and duties.
- “ 272. Accounts and annual report of board of  
“ fisheries, game and forest relative  
“ to the forest preserve.
- “ 273. Partition of lands.
- “ 274. Taxation of forest preserve.
- “ 275. Duties of railroad companies.
- “ 276. Powers and duties of certain officers in  
“ case of fire.
- “ 277. Supervisors to be town protectors of  
“ land.
- “ 278. Supervisors ex officio, fire wardens.
- “ 279. Supervisors to report fires.
- “ 280. Actions for trespass upon forest preserve.
- “ 281. Penalty for setting fire to forest lands.
- “ 282. Arrest of offenders without warrant.
- “ 283. Deer parks in the Catskill region.

" Section 270. FOREST PRESERVE. The forest preserve  
" shall include the lands owned or hereafter acquired by  
" the State within the counties of Clinton, except the  
" towns of Altona and Dannemora, Delaware, Essex,  
" Franklin, Fulton, Hamilton, Herkimer, Lewis, Oneida,  
" Saratoga, St. Lawrence, Warren, Washington, Greene,  
" Ulster and Sullivan, except

" 1. Lands within the limits of any village or city and  
" 2. Lands, not wild lands, acquired by the State on  
" foreclosure of mortgages made to the commissioner for  
" loaning certain moneys of the United States, usually  
" called the United States deposit fund.

" Section 271. POWERS AND DUTIES. The board of  
" fisheries, game and forest, shall:

" 1. Have the care, custody, control and superintend-  
" ence of the forest preserve.

" 2. Maintain and protect the forests in the forest pre-  
" serve, and promote as far as practicable the further  
" growth of the forest therein.

" 3. Have charge of the public interests of the State  
" with regard to forestry and tree planting, and especially  
" with reference to forest fires in every part of the state.

" 4. Possess all the powers relating to forest preserve  
" which were vested in the commissioners of the land  
" office, and in the comptroller on May fifteen, eighteen  
" hundred and eighty-five.

" 5. Prescribe rules and regulations affecting the whole  
" or any part of the forest preserve and for its use, care  
" and administration and alter or amend the same; but  
" neither such rules or regulations nor anything contained  
" in this article shall prevent or operate to prevent the  
" free use of any road, stream or water as the same may  
" have been heretofore used, or as may be reasonably re-  
" quired in the prosecution of any lawful business.

" 6. Take such measures as in the judgment of the

" commissioners may be proper, and the State superintendent of public instruction and the regents of the university may approve, for awakening an interest in behalf of forestry in the common schools, academies and colleges of the State and of imparting elementary instruction on such subject therein; and prepare and distribute the tracts and circulars of information, giving plain and concise instructions for the care of private wood lands and for the growth of new forests upon lands that have been denuded, exhausted by cultivation, eroded by torrents, or injured by fire, or that are sandy, marshy, broken, sterile, or waste and unfit for other use. These publications shall be furnished without cost to any citizen of the State on application, and proper measures may be taken for bringing them to the notice of persons who would be benefited thereby.

" 7. Cause rules for the prevention and suppression of forest fires to be printed for posting in school-houses, inns, saw-mills and other wood-working establishments, lumber camps and other places in such portions of the State as they may deem necessary. Forest inspectors, foresters, firewardens, supervisors and school trustees shall cause these rules when received by them, to be properly posted and replaced when lost or destroyed. Any persons maliciously or wantonly defacing or destroying any such notice shall forfeit to the people of the State, the sum of five dollars for every such offense.

" **Section 272. ACCOUNTS AND ANNUAL REPORT OF THE BOARD OF FISHERIES, GAME AND FOREST, RELATIVE TO THE FOREST PRESERVE.** All income from State forest lands, including receipts for trespasses, shall be paid over by the board of fisheries, game and forest to the State treasurer, by whom it shall be placed to the credit of the special fund established for the purchase of lands within the Adirondack park, and a strict account shall

" be kept of all receipts and expenses of the commission,  
" which account shall be audited by the comptroller. The  
" commission shall, annually, in the month of January,  
" make a written report to the legislature of their receipts  
" and expenses, and of all their proceedings, with such  
" recommendations of further legislative or official action  
" as they may deem proper.

Section 273. PARTITION OF LANDS. Whenever the State  
" owns an undivided interest with any person in lands of  
" the forest preserve or holds and is in possession of such  
" lands as joint tenant or tenant in common with any per-  
" son who has a freehold estate therein, the attorney-  
" general shall on the request of the board of fisheries,  
" game and forest, bring an action in the name of the  
" people of the State, for the actual partition of such land ;  
" and on the written consent of the board such person may  
" maintain an action for the actual partition of such land  
" in the same manner as if the State were not entitled to  
" exemption from legal proceedings, and service of pro-  
" cess in such action upon the attorney-general shall be  
" deemed service upon the State. Such actions, the pro-  
" ceedings and judgment therein and the proceedings  
" under the judgment shall be according to the practice at  
" the time prevailing in actions of partition, and shall have  
" the same force and effect as in other actions, except that  
" no costs against the State shall be allowed in such actions  
" and no sale of such lands shall be adjudged therein.  
" The board of fisheries, game and forest may without  
" action, but with the consent of the comptroller, agree  
" with any person or persons owning lands within the  
" forest preserve jointly or as tenants in common, with the  
" State for the partition of such lands, and on such agree-  
" ment and consent, the comptroller shall make on behalf  
" of the people of the State, any conveyance necessary or  
" proper in such partition, and such conveyance shall be

" forthwith recorded as now provided by law as to conveyances made by the commissioners of the land office.

" Section 274. TAXATION OF FOREST PRESERVE. All  
" wild or forest land within the forest preserve shall be  
" assessed and taxed at a like valuation, and rate as  
" similar lands of individuals within the counties where  
" situated. On or before August first in every year, the  
" assessors of the town within which the lands so belong-  
" ing to the State are situated shall file in the office of the  
" comptroller and of the board of fisheries, game and  
" forest, a copy of the assessment-roll of the town which  
" in addition to the other matter now required by law  
" shall state and specify which and how much, if any, of  
" the lands assessed are forest lands, and which and how  
" much, if any, are lands belonging to the State; such  
" statements and specifications to be verified by the oaths  
" of a majority of the assessors. The comptroller shall  
" thereupon and before the first day of September follow-  
" ing, and after hearing the assessors and board of fish-  
" eries, game and forest, if they or any of them so desire,  
" correct or reduce any assessment of State land which  
" may be in his judgment an unfair proportion to the re-  
" maining assessment of land within the town, and shall in  
" other respects approve the assessment and communicate  
" such approval to the assessors. No such assessment of  
" State lands shall be valid for any purpose until the  
" amount of assessment is approved by the comptroller,  
" and such approval attached to and deposited with the  
" assessment-roll of the town and therewith delivered by  
" the assessors of the town to the supervisor thereof or  
" other officer authorized to receive the same from the  
" assessors. No tax for the erection of a school-house or  
" opening a road shall be imposed on the State lands un-  
" less such erection or opening shall have been first  
" approved in writing by the board of fisheries, game and

" forest. Payment of the lawful and just amount of the  
" taxes imposed under this section on lands so belonging  
" to the State shall, in every year, be made by the treasurer  
" of the State, on the certificate of the comptroller, by  
" allowing to the treasurer of the county in which such  
" lands are situated a credit of the amount of such taxes  
" due on such lands payable by such county treasurer in  
" such year to the State for State taxes; but no fees shall  
" be allowed by the comptroller to the county treasurers  
" in adjusting their accounts for such portion of the State  
" tax so paid.

" **Section 275. DUTIES OF RAILROAD COMPANIES.** Every  
" railroad company whose road passes through waste or  
" forest lands or lands liable to be overrun by fires  
" within the State, shall twice in each year cut and re-  
" move from its right of way all grass, brush or other in-  
" flammable materials, but under proper care and at  
" proper times when fire, if set, can be kept under control.  
" All locomotives which run through forest lands shall be  
" provided with approved and sufficient arrangements for  
" preventing the escape of fires from their furnaces or ash-  
" pans, and with netting of steel or iron wire upon their  
" smoke stacks to prevent the escape of sparks of fire,  
" and every engineer and fireman employed upon a loco-  
" motive shall see that the appliances to prevent the  
" escape of fire are in use and applied as far as it can be  
" reasonably and practically done. No railroad company  
" shall permit its employes to deposit fire coals or ashes  
" upon their track in the immediate vicinity of wood-  
" lands, or lands liable to be overrun by fires, and where  
" any engineers, conductors or trainmen discover that  
" fences or other material or substances along the right  
" of way upon woodlands adjacent to the railroad are  
" burning, or in danger from fire, they shall report the  
" same at their next stopping place, and the person in

" charge of such station, shall take prompt measures to  
" extinguish such fires, and shall immediately notify the  
" nearest fire warden or fish and game protector and  
" forester. In seasons of drought and especially during  
" the first dry time in the spring after the snows have  
" gone, and before vegetation has revived, railroad com-  
" panies shall employ a sufficient number of trackmen for  
" the prompt extinguishment of fires; and where a forest  
" fire is raging near the line of their road they shall con-  
" centrate such help and adopt such measures as shall  
" most effectually arrest its progress. If any railroad com-  
" pany or any of its employes violate any provision of  
" this section the company shall forfeit to the people  
" of the State the sum of one hundred dollars for every  
" such violation.

" **Section 276. POWERS AND DUTIES OF CERTAIN OFFICERS**  
" **IN CASE OF FIRE.** The board of fisheries, game and  
" forest, fish and game protectors and foresters, and other  
" persons employed by or under the authority of the board of  
" fisheries, game and forest, and who may be authorized by  
" the board to assume such duty, shall in a town within or  
" a part of the forest preserve, whenever the woods in any  
" such town shall be on fire, perform the duty imposed  
" on them, and in such case shall have the powers granted to  
" justices of the peace, the supervisors and commissioners  
" of highways with reference to the ordering of persons  
" to assist in extinguishing fires or stopping their progress.  
" The fire warden, or the supervisor, where acting in gen-  
" eral charge, may cause fences to be destroyed or furrows  
" to be ploughed, to check the running of fire, or in case  
" of great danger, back fires may be set along a road or  
" stream or other line of defense, to clear off the com-  
" bustible material before an advancing fire. No action  
" for trespass shall be brought by any owner of land for  
" entry made upon his premises by persons going to assist

" in extinguishing a forest fire although such fire may not  
" be upon his land. The compensation for services of per-  
" sons who may assist in extinguishing forest fires shall  
" be a State charge and shall not exceed the sum of two  
" dollars per day for each person employed; such com-  
" pensation shall be paid by the State treasurer on the  
" warrant of the comptroller, on certificates approved by  
" the fire warden of the town in which the fire occurred,  
" and by the board of fisheries, game and forest.

" **Section 277. SUPERVISORS TO BE TOWN PROTECTORS  
OF LANDS.** The supervisor of every town in the State  
" not within or a part of the forest preserve in which wild  
" or forest lands belonging to the State are located shall  
" be, by virtue of his office, the protector of such lands,  
" subject to the instructions he may receive from the  
" board of fisheries, game and forest. He shall report to  
" the district attorney for prosecution any acts of spolia-  
" tion or injury that may be done, and such district attor-  
" ney shall institute proceedings for the prevention of  
" further trespass and for the recovery of all damages  
" committed, with costs of prosecution. The supervisors  
" shall report their proceedings therein to the board of  
" fisheries, game and forest. In towns where the board  
" deems it necessary, it may serve a notice upon the super-  
" visor, requiring him to appoint one or more forest  
" guards, and if more than one in a town, the district of  
" each shall be properly defined. The guards so appointed  
" shall have such powers, perform such duties and receive  
" such pay as the board of fisheries, game and forest may  
" determine.

" **Section 278. SUPERVISORS EX-OFFCIO FIRE WARDENS.**  
" Every supervisor of a town in this State, in which there  
" are no wild or forest lands of the forest preserve, and  
" in which no fire warden is appointed by the board of

"fisheries, game and forest, shall be ex-officio fire warden  
"therein, but the supervisor may divide towns particularly  
"exposed to damages from forest fires into two or more  
"districts, bounded as far as may be by roads, streams of  
"water or dividing ridges of land or lot lines, and appoint  
"in writing one resident citizen in each district as district  
"fire warden therein. A description of these districts  
"and the names of the district fire wardens thus appointed  
"shall be recorded in the office of the town clerk. The  
"supervisor may also cause a map of the fire districts of  
"his town to be posted in some public place with the  
"names of the district fire wardens appointed. The cost  
"of such map, not exceeding five dollars, shall be a town  
"charge, and the services of the fire warden shall also be  
"deemed a town charge and shall not exceed the sum of  
"two dollars per day for the time actually employed.  
"Within a town in which there are wild or forest lands  
"of the forest preserve, and in such other towns in the  
"counties mentioned in section two hundred and seventy  
"of this chapter as the board of fisheries, game and forest  
"may designate, such persons shall be fire wardens as  
"may, from time to time, be appointed by the board of  
"fisheries, game and forest, and shall act during the  
"pleasure of such board, and all the provisions of this  
"article with reference to supervisors and district town  
"wardens shall be applicable to them, except that any  
"expense incurred by such fire wardens shall be a State  
"charge. On the discovery of a forest fire or a fire in  
"any woods, the fire warden of the district, town or  
"county in which it shall be, shall take such measures as  
"shall be necessary for its extinction, and for this pur-  
"pose he may call on any person in the territory in  
"which he acts or in its vicinity for assistance, and any  
"person refusing to act when so called on, shall forfeit  
"to the people of the State the sum of ten dollars. Any

" justice of the peace or commissioner of highways of the  
" town in which any such fire shall be, shall act as fire  
" warden with respect to any such fire, if the fire wardens  
" of the district, town or county are not taking such  
" measures for its extinguishment.

" **Section 279. SUPERVISORS TO REPORT FIRES.** The  
" fire warden of every town in which a forest fire of more  
" than one acre in extent has occurred within a year,  
" shall report to the board of fisheries, game and forest,  
" the extent of area burned over, to the best of his in-  
" formation, together with the probable amount of prop-  
" erty destroyed, specifying the value of timber, as near  
" as may be, and amount of cord-wood, logs, bark, or  
" other forest product, and of fences, bridges and build-  
" ings that have been burned. He shall make inquiries  
" and report as to the causes of such fires, is ascertainable  
" and as to the measures employed and found most effect-  
" ual in checking their progress. A consolidated sum-  
" mary of these returns by counties and of the informa-  
" tion as to the same matter otherwise gathered by the  
" board of fisheries, game and forest shall be included in  
" their annual report.

" **Section 280. ACTIONS FOR TRESPASSES UPON FOREST  
" PRESERVE.** The board of fisheries, game and forest may  
" bring in the name of the people of the State any action  
" to prevent trespass upon or injury to the forest pre-  
" serve and recover damages therefor or to recover lands  
" properly forming part of the forest preserve but occupied  
" or held by persons not entitled thereto, or for the main-  
" tenance and protection of the forest preserve, which  
" any owner of lands would be entitled to bring; or for  
" cutting or carrying away, or causing to be cut or assist-  
" ing to cut, any trees or timber within the forest preserve  
" or any bark thereupon, or removing any tree, timber

" or bark, or any portion thereof from such forest pre-  
" serve. Every person violating the provisions of this  
" section, relating to the cutting or carrying away any  
" timber, trees or bark, shall forfeit to the State the sum  
" of twenty-five dollars for every tree cut or carried away  
" by him or under his direction. The board of fisheries,  
" game and forest may, with the consent of the attorney-  
" general and comptroller, employ attorneys and counsel  
" to prosecute any such action or to defend any action  
" brought against the board or any of its members or sub-  
" ordinates arising out of their or his official conduct with  
" relation to the forest preserve. Any attorney or coun-  
" sel so employed shall act under the direction of and in  
" the name of the attorney-general. Where such at-  
" torney or counsel is not so employed, the attorney-  
" general shall prosecute and defend such actions. A  
" preliminary or final injunction shall, on application in  
" an action brought by or at the instance of the board of  
" fishers, game and forest, be granted restraining any act  
" of trespass, waste or destruction upon the forest pre-  
" serve. All such actions for the prosecution shall be  
" brought in the county where the trespass is alleged to  
" have been committed.

" **Section 281. PENALTY FOR SETTING FIRE TO FOREST  
LANDS.** Any person who shall wilfully or negligently  
" set fire to, or assist another to set fire to any waste or  
" forest lands belonging to the State or to another person,  
" whereby such forests are injured or endangered; or who  
" suffers any fire upon his own lands to escape or extend  
" beyond the limits thereof to the injury of the wood lands  
" of another or of the State, shall forfeit to the State for  
" every such offense not less than fifty nor more than five  
" hundred dollars, and be liable to the person injured for  
" all damages that may be caused by such fires.

" **Section 282. ARREST OF OFFENDERS WITHOUT WARRANT.** The fish and game protectors and foresters, and other persons acting upon the forest preserve under the written employment of the board of fisheries, game and forest, may, without warrant, arrest any person found upon the forest preserve violating any of the provisions of this article and forthwith take the person so arrested before a magistrate having jurisdiction to issue warrants in such cases, and there make or procure to be made a complaint in writing, on which complaint the magistrate shall act as the case may require.

" **Section 283. DEER PARKS IN THE CATSKILL REGION.** The board of fisheries, game and forest shall set apart tracts of land (not exceeding three) of such size as they may deem proper, belonging to the State and including such adjoining lands as may be deemed necessary, in the Catskill region, now constituting that part of the forest preserve situated in the counties of Delaware, Greene, Sullivan and Ulster, for the purpose of breeding deer and wild game. The board of fisheries, game and forest shall purchase and turn out upon such lands such deer or other game as they may think proper and establish all proper rules for the protection of such land and the game thereupon. No game shall be killed, pursued, or trapped or in any way destroyed within the limits of such land so set apart for the period of five years from the time that such land shall be so set apart. The board may receive private subscriptions of money and expend the same for the purposes specified in this section, and may, from time to time, enlarge the area of any such park by purchasing other lands adjacent thereto, so as to include as large an acreage of State lands as practicable within the bounds of each park. The proceeds of the lands sold prior to January first, eighteen hundred and ninety-five, shall be used for no other purpose than

" the purchase of additional lands for such parks, and the  
 " board may execute and receive and accept, in the name  
 " of the State, all contracts and conveyances necessary to  
 " carry into effect the provisions of this section.

### " ARTICLE XIII.

#### " ADIRONDACK PARK.

" Section 290. Adirondack park.

" 291. Powers and duties of forest commission.

" 292. Contracts.

" 293. Proceeds of lands sold and payment for  
 " lands purchased.

" 294. Revenues from leases made prior to  
 " January first, eighteen hundred and  
 " ninety-five.

" 295. Annual report.

" Section 290. ADIRONDACK PARK. All lands now  
 " owned or hereafter acquired by the State within the  
 " county of Hamilton; the towns of Newcomb, Minerva,  
 " Schroon, North Hudson, Keene, North Elba, Saint  
 " Amand and Wilmington, in the county of Essex; the  
 " towns of Harrietstown, Santa Clara, Altamont, Waverly  
 " and Brighton, in the county of Franklin; the town of  
 " Wilmurt, in the county of Herkimer; the towns of  
 " Hopkinson, Colton, Clifton and Fine, in the county of  
 " Saint Lawrence, and the towns of Johnsburgh, Stony  
 " Creek, and Thurman, and the islands in Lake George,  
 " in the county of Warren; except such lands as may be  
 " sold as provided in this article, shall constitute the  
 " Adirondack park. Such park shall be forever reserved,  
 " maintained and cared for as ground open for the free  
 " use of all the people for their health and pleasure and  
 " as forest lands, necessary to the preservation of the  
 " headwaters of the chief rivers of the State, and a future

" timber supply; and shall remain part of the forest pre-  
" serve.

" **Section 291. POWERS AND DUTIES OF FOREST COM-**  
" **MISSION.** The board of fisheries, game and forest shall  
" have the care, custody, control and superintendence  
" of the Adirondack park, and within the same and with  
" reference thereto and to acts committed therein and to  
" persons committing the same, all the control, powers,  
" duties, rights of action and remedies belonging to such  
" board or the commissioners of the land office within and  
" with reference to the forest preserve as to acts com-  
" mitted therein and persons committing the same. The  
" board of fisheries, game and forest shall have power:

" 1. To contract as herein provided for the purchase of  
" land situated within the bounds of the park as defined  
" in the preceding section; if any such lands cannot be  
" purchased on advantageous terms unless subject to  
" leases or restrictions or the right to remove soft wood  
" timber, the contract may provide accordingly, but not  
" for any such right, lease or restriction after ten years  
" from the date of the contract, nor for the right to re-  
" move any such trees with a diameter of less than twelve  
" inches at the height of three feet from the ground.

" 2. To contract with owners of land situated within  
" the bounds of the park that such lands may become part  
" of the park and subject to the provisions of this article,  
" in consideration of the exemption of such lands from  
" taxation for State and county purposes, which contract  
" shall contain a provision that the owners of such land  
" and their grantees shall forever refrain from removing  
" any of the timber thereupon except spruce, tamarack or  
" poplar timber twelve inches in diameter, at a height of  
" three feet above the ground, or fallen, burned or blighted  
" timber, and such other and further conditions as to the  
" right of occupancy of such lands by such owners or their

" grantees as may be equitable. Such contract may also " reserve to the owners of such forest lands and their gran- " tees the privilege of clearing portions of such lands for " agricultural or domestic purposes under regulations to " be prescribed by the forest commissioners, but no such " privilege shall give to the owners or grantees of said " lands, the right to clear more than one acre within the " boundary of each one hundred acres covered by said " contract.

" 3. To prescribe and enforce ordinances and regulations " for the government and care of the park and for licens- " ing or regulation of guides or other persons engaged in " business therein.

" 4. To lay out paths and roads in the park.

" **Section 292. CONTRACTS.** A contract mentioned in this " article shall not take effect until approved by the com- " missioners of the land office; a certificate of which " approval, certified by the clerk of said commissioners, " shall be attached to the copy of the resolution of the " board of fisheries, game and forest, authorizing such " contract. Every conveyance mentioned in this article " shall be certified by the attorney-general to be in con- " formity with the contract, and approved by him as to " form before the acceptance or delivery thereof, and shall " be made to the people of the State, recorded in the " proper county, and after record delivered to the com- " missioners of the land office as a part of their archives.

" **Section 293. PROCEEDS OF LANDS SOLD AND PAYMENT**  
" **FOR LANDS PURCHASED.** The proceeds of lands sold " prior to January first, eighteen hundred and ninety-five, " and paid to the State treasurer shall be held by him as " a separate fund and special deposit at all times available " for the purchase of other lands under this article. Pay- " ment for such purchases and for expenses necessarily

" incurred by the board in the preliminary examinations  
" of lands purchased under authority of this article, or  
" in the examination of titles of lands so purchased, or  
" otherwise necessarily incidental to such purchases, may  
" be made from such fund or from any moneys appro-  
" priated therefor on the certificate of the commission and  
" audit of the comptroller.

" **Section 294. REVENUES FROM LEASES MADE PRIOR TO**  
" **JANUARY FIRST, EIGHTEEN HUNDRED AND NINETY-FIVE.**  
" All revenues received from leases of State lands made  
" made prior to January first, eighteen hundred and  
" ninety-five, shall be paid into the State treasury, and  
" shall be placed to the credit of the special fund estab-  
" lished for the purchase of lands within the Adirondack  
" park.

" **Section 295. ANNUAL REPORT.** The board of fisheries,  
" game and forest shall include in its annual report an  
" account of its proceedings with reference to the park,  
" including a statement of the number of acres of land  
" purchased during the year, the locality thereof, the  
" price paid, the revenue from leases made prior to  
" January first, eighteen hundred and ninety-five, and all  
" other information of importance connected with such  
" transactions; and shall state the amount of money re-  
" quired in the next fiscal year for the purchase of lands  
" and expenses of the park, and make such recommenda-  
" tions with reference thereto as it deems wise.

" **Section 4. Article twelve of the game law, being**  
" **chapter four hundred and eighty-eight of the laws of**  
" **eighteen hundred and ninety-two, is hereby made**  
" **article fourteen, and sections two hundred and seventy**  
" **and two hundred and seventy-nine, inclusive, are here-**  
" **by renumbered three hundred to three hundred and**  
" **nine, respectively.**

"Section 5. Chapter three hundred and thirty-two of  
"the laws of eighteen hundred and ninety three, chapters  
"four hundred and thirty-nine and six hundred and  
"sixty-five of the laws of eighteen hundred and ninety-  
"four are hereby repealed."

"Chapter 561. Laws of 1895.

"AN ACT to authorize the forest commission to pur-  
"chase lands within the boundaries of the forest preserve.

"Became a law May 8, 1895, with the approval of the  
"Governor. Passed, three-fifths being present.

"*The People of the State of New York, represented in  
Senate and Assembly, do enact as follows:*

"Section 1. Pursuant to its recommendation and reso-  
"lution, transmitted to the legislature February fifth,  
"eighteen hundred and ninety-five, the forest commission,  
"or such department of the State government as may  
"hereafter be charged with the care of the forest preserve  
"is authorized, with the approval of the commissioners of  
"the land office, to purchase, for the uses and purposes of  
"the Adirondack park, the whole or any portion of any  
"township or great lot within the boundaries of the forest  
"preserve, the owners of which have sustained damage by  
"the construction of reservoirs by the State for canal pur-  
"poses, or to restore waters taken for the canals, not ex-  
"ceeding in all eighty thousand acres, at a reasonable and  
"fair valuation, taking into account the damages neces-  
"sarily sustained by any such owner in consequence of  
"such acts of the State in constructing and maintaining  
"such reservoirs, but every such purchase shall be upon  
"the express condition stated in the contract of purchase,  
"that the land owner from whom the purchase is made,  
"shall release to the state all claims for damages to lands  
"not purchased, and owned and retained by him.

“ Section 2. The treasurer shall pay, on the warrant of  
 “ the comptroller, from the moneys now in the hands of  
 “ the treasurer of the State to the credit of the forest com-  
 “ mission, and known as the forest preserve fund, the sum  
 “ of fifty thousand dollars, or so much thereof as may be  
 “ necessary, and said sum is hereby appropriated for the  
 “ purposes of this act, and the forest commission is author-  
 “ ized to provide for the payment of the residue of such  
 “ purchase price in ten equal installments with interest,  
 “ at the rate of three per centum per annum, payable  
 “ semi-annually.

“ Section 3. This act shall take effect immediately.

#### 4. *Canal Laws.*

##### CHAP. CCLXII.

“ AN ACT respecting navigable communications between  
 “ the great western and northern lakes and the Atlantic  
 “ ocean.

“ Passed April 15, 1817.

“ WHEREAS navigable communications between lakes  
 “ Erie and Champlain, and the Atlantic ocean, by means  
 “ of canals connected with the Hudson river, will pro-  
 “ mote agriculture, manufactures and commerce, mitigate  
 “ the calamities of war, and enhance the blessings of  
 “ peace, consolidate the union, and advance the pros-  
 “ perity and elevate the character of the United States:  
 “ AND WHEREAS it is the incumbent duty of the people  
 “ of this state to avail themselves of the means which the  
 “ Almighty has placed in their hands for the production  
 “ of such signal, extensive and lasting benefits to the  
 “ human race:”

“ II. AND BE IT FURTHER ENACTED, That the commis-  
 “ sioners appointed by the act, entitled ‘an act to pro-

" vide for the improvement of the internal navigation of  
" 'this state,' passed April 17, 1816, shall continue to  
" possess the powers thereby conferred, and be denomi-  
" nated 'the canal commissioners;' and they are hereby  
" authorized and empowered, in behalf of this state, and  
" on the credit of the fund herein pledged, to commence  
" making the said canals, by opening communications  
" by canals and locks between the Mohawk and Seneca  
" rivers, and between Lake Champlain and the Hudson  
" river; to receive from time to time from the commis-  
" sioners of the canal fund, such monies as may be neces-  
" sary for and applicable to the objects hereby contem-  
" plated; to cause the same to be expended in the most  
" prudent and economical manner, in all such works as  
" may be proper to make the said canals; and on com-  
" pleting any part or parts of the works or canals con-  
" templated by this act, to establish reasonable tolls and  
" adopt all measures necessary for the collection and pay-  
" ment thereof to the commissioners of the canal fund;  
" that a majority of the said commissioners shall be a  
" board for the transaction of business, each of whom  
" shall take an oath well and faithfully to execute the  
" duties of his office, and shall report to the legislature  
" at each session thereof, the state of said works and  
" expenditures, and recommend such measures as they  
" may think advisable for the accomplishment of the  
" objects intended by this act; and in case of any vacancy  
" in the office of commissioner, during the recess of the  
" legislature, the person administering the government  
" may appoint a person to fill such vacancy until the  
" legislature shall act in the premises.

" **III. AND BE IT FURTHER ENACTED,** That it shall and  
" may be lawful for the said canal commissioners, and  
" each of them, by themselves and by any and every  
" superintendent, agent and engineer employed by them,

" to enter upon, take possession of, and use all and singular any lands, waters and streams necessary for the prosecution of the improvements intended by this act,  
" and to make all such canals, feeders, dykes, lock, dams  
" and other works and devices as they may think proper  
" for making said improvements, doing, nevertheless, no  
" unnecessary damage; and that in case any lands, waters,  
" or streams, taken and appropriated for any of the purposes aforesaid, shall not be given or granted to the people of this state, it shall be the duty of the canal commissioners, from time to time, and as often as they think reasonable and proper, to cause application to be made to the justices of the supreme court, or any two of them, for the appointment of appraisers; and the said justices shall thereupon, by writing, appoint not less than three nor more than five discreet, disinterested persons as appraisers, who shall, before they enter upon the duties of their appointment, severally take and subscribe an oath, or affirmation, before some person authorized to administer oaths, faithfully and impartially to perform the trust and duties required of them by this act; which oath or affirmation shall be filed with the secretary of the canal commissioners; and it shall be the duty of the said appraisers, or a majority of them, to make a just and equitable estimate and appraisal of the loss and damage, if any, over and above the benefit and advantage to the respective owners and proprietors, or parties interested in the premises, so required for the purposes aforesaid, by and in consequence of making and constructing any of the works aforesaid; and the said appraisers, or a majority of them, shall make regular entries of their determination and appraisal, with an apt and sufficient description of the several premises appropriated for the purposes aforesaid, in a book or books to be provided and kept by the canal

" commissioners, and certify and sign their names to such  
" entries and appraisal, and in like manner certify their  
" determination as to those several premises which will  
" suffer no damages, or will be benefitted more than in-  
" jured by or in consequence of the works aforesaid; and  
" the canal commissioners shall pay the damages so to be  
" assessed and appraised, and the fee simple of the prem-  
" ises, so appropriated, shall be vested in the people of  
" this state.

" IV. AND BE IT FURTHER ENACTED, That whenever,  
" in the opinion of the canal commissioners, it shall be for  
" the interest of this state, for the prosecution of the works  
" contemplated by this act, that all the interest and title  
" (if any) in law and equity, of the Western inland lock  
" navigation company, should be vested in the people of this  
" state, it shall be lawful for the said canal commissioners  
" to pass a resolution to that effect; and that it shall then  
" be lawful for the president of the canal commissioners  
" to cause a copy of such resolution, with a notice signed  
" by himself and the secretary of the said commissioners,  
" to be delivered to the president or other known officer  
" of said company, notifying the president and directors  
" of the said company, that an application will be made  
" to the justices of the supreme court, at a term thereof  
" to be held not less than thirty days from the time of  
" giving such notice, for the appointment of appraisers  
" to estimate the damages to be sustained by the said  
" company, by investing in the people of this state, all  
" the lands, waters, canals, locks, feeders and appurte-  
" nances thereto acquired, used and claimed by the said  
" company, under its act of incorporation, and the sev-  
" eral acts amending the same; and it shall be the duty  
" of the justices aforesaid, at the term mentioned in the  
" said notice, and on proof of the service thereof to  
" appoint by writing, under the seal of the said court and

" the hands of at least three of the said justices, not less than three, nor more than five, disinterested persons, being citizens of the United States, to estimate and appraise the damages aforesaid; and it shall be the duty of the said appraisers, or a majority of them, to estimate and appraise the damages aforesaid, and severally to certify the same, under oath, before an officer authorized to take the acknowledgment of deeds, to be a just, equitable and impartial appraisal, to the best of their judgment and belief, and shall thereupon deliver the same to one of the canal commissioners, who shall report the same to the said court; and if the said court shall be of opinion, that the said damages have been fairly and equitably assessed, the said justices, or any three of them, may certify the same on the said report; and the amount of the said damages, and the expense of the said appraisal, shall be audited by the comptroller, and paid, on his warrant, by the treasurer, out of the canal fund; and the people of this state shall thereupon be invested with, and the said canal commissioners may cause to be used, all the lands, waters, streams, canals, locks, feeders and appurtenances aforesaid, for the purposes intended by this act.

#### " CHAP. CCII.

" AN ACT for the maintenance and protection of the Erie and Champlain Canals, and the Works connected therewith.

" Passed April 13, 1820.

\* \* \* \* \*

" III. BE IT FURTHER ENACTED, That for the speedy reparation of such injury, that whenever, and as often as such case shall happen, it shall be lawful for the said commissioners, or either of them, or of their en-

“ gineers, or any other person employed by either of them  
“ with carts, waggons or other carriages, with their beasts  
“ of draft or burthen, and all necessary tools and imple-  
“ ments, to enter upon any lands contiguous to the said  
“ canals, or the works connected therewith, and to dig  
“ for, work, get and carry away, and use, all such stone,  
“ gravel, clay, timber, and other materials as may be  
“ necessary or proper, in their opinion, for such repara-  
“ tion, doing as little damage thereby as the nature of the  
“ case will permit. And in case damages shall be claimed  
“ by the owner or owners of any land entered upon for the  
“ purpose of obtaining materials as aforesaid, and the said  
“ commissioners, or either of them, or the principal en-  
“ gineer of that portion of either of the said canals, where  
“ such injury may have occurred, cannot agree with such  
“ owner or owners as to the amount of said damages, then,  
“ for the purpose of ascertaining that amount, it shall be  
“ lawful for either of the said acting commissioners, or for  
“ such engineer, to select one discreet freeholder of the  
“ county wherein such damages may be claimed, and such  
“ owner or owners, another, and these two freeholders  
“ shall select a third, which three, after being severally  
“ sworn before any person authorized to administer oaths,  
“ faithfully and impartially to assess said damages, shall  
“ proceed to enquire into said damages, and after having  
“ ascertained the same by the concurrent opinion of any  
“ two or all of the said freeholders, they shall certify the  
“ same in writing, under their hands and seals, or the  
“ hands and seals of any two of them; and the amount of  
“ damages thus certified, shall be paid to such owner or  
“ owners, by the said commissioners, within ten days after  
“ said certificate shall be delivered to them, or as soon  
“ thereafter as they shall be in funds; and proof of such  
“ payment or of the offer of such payment, in case of re-  
“ fusal to receive the same on the part of such owner or

“ owners, shall forever discharge the said commissioners  
 “ and their engineers, and all persons employed by them,  
 “ from all claims for entering upon such land, and taking  
 “ and using materials as aforesaid ; and in case the amount  
 “ of damages certified by said freeholders, in any case,  
 “ shall fall short of the sum offered for such damages by  
 “ said commissioners or engineer, previously to the selec-  
 “ tion of said freeholders, then the cost of all proceedings  
 “ after such offer, shall be deducted from the amount of  
 “ damages so certified, and said commissioners shall be  
 “ required to pay to said owner or owners, no more than  
 “ the residue of said damages after the deduction of such  
 “ cost ; but in case the amount of damages so certified,  
 “ shall exceed such previous offer, then all such cost shall  
 “ be paid by said commissioners over and above the dam-  
 “ ages so certified ; and the said freeholders shall each be  
 “ entitled for his services to the sum of one dollar and  
 “ fifty cents, for each assessment of damages ; and if more  
 “ days than one are required to ascertain and assess said  
 “ damages, then each of said freeholders shall be entitled  
 “ to one dollar and fifty cents per day, for every day thus  
 “ required.”

“ REVISED STATUTES (1830).

“ Part 1, Chap. 9, Title 9, Art. 2.

“ Section 16. In the construction of every canal of  
 “ which the construction is or shall be authorized by  
 “ law, the canal commissioners shall have power, and it  
 “ shall be their duty, to make all such canals, feeders,  
 “ locks, dams, aqueducts, and other works, as they shall  
 “ deem the proper construction of such canal to require ;  
 “ and they shall enter on, and take possession of, and  
 “ use, all lands, streams and waters, the appropriation of  
 “ which, for the use of such canals and works, shall, in  
 “ their judgment, be necessary.

"Section 17. Whenever, in the opinion of the canal commissioners, it shall become necessary or expedient, to make any extraordinary repairs or improvements on any completed canal, such as the opening of new feeders, or the constructions of additional locks, dams, embankments, tunnels or aqueducts, it shall be their duty to cause the necessary surveys and levels to be taken, and accurate drafts, plans and models, or maps, as the case may require, of the contemplated works, together with an estimate, in minute detail, of the probable expense to be incurred, and to submit the same to the canal board for their approbation.

"Section 18. If such extraordinary repairs or improvements shall be directed by the board or the legislature, it shall be the duty of the commissioners to proceed, as soon as circumstances will permit, to execute and complete the same; and for that purpose, by themselves or their agents, to take possession of, and use, all lands, waters or streams of which the occupation and use, in their judgment, may be necessary to enable them to discharge such duties.

"Section 19. Whenever for the purpose of constructing a canal, or making any extraordinary repairs or improvements, it shall be deemed necessary by the canal commissioners having charge of the work, to discontinue or alter any part of a public road, on account of its interference with the proper location or construction of such work, he shall make, or direct to be made, such discontinuance or alteration."

#### "Part 1, Chap. 9, Title 9, Art. 3.

"Section 45. There shall continue to be appointed two officers, by the name of canal appraisers, who being associated with any acting canal commissioner, shall be the appraisers of damages, in the cases hereinafter speci-

"fied. The oath or affirmation of office, taken by the  
"canal appraisers, shall be filed in the office of the secre-  
"tary of state.

"Section 46. When any lands, waters or streams,  
"appropriated by the canal commissioners, to the use of  
"the public, shall not be given or granted to the state, it  
"shall be the duty of the appraisers to make a just and  
"equitable estimate and appraisement of the damages,  
"and benefits, resulting to the persons interested in the  
"premises so appropriated, from the construction of the  
"work, for the purpose of making which, such premises  
"shall have been taken.

"Section 47. It shall be their duty, for that purpose,  
"to meet at such times and places as they may deem  
"necessary, and as nearly in the vicinity of the premises,  
"as conveniently may be, and hear such proper and  
"relevant evidence as shall be offered; and they are for  
"that purpose, empowered to administer oaths to wit-  
"nesses.\*

"Section 48. Every person interested in premises so  
"appropriated, if he intend to make any claim for dam-  
"ages shall, within one year after such premises shall  
"have been taken for the use of the state, exhibit to the  
"appraisers a statement of his claim, in writing, signed  
"by himself, his guardian or agent, and specifying the  
"nature and extent of his interest in the premises appro-  
"priated, and the amount of damages; and every person  
"refusing or neglecting to exhibit such claim, within the  
"time prescribed, shall be deemed to have surrendered  
"to the state his interest in the premises so appropriated.

"Section 49. No claim for damages, for premises that  
"shall have been appropriated to the use of a canal at  
"any time before this chapter shall be in force, shall be

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\* " Sec. 1 and 2 of ch. 368, of Laws of 1829, contain provisions incon-  
sistent with this section, and probably repeal it."

" received by the appraisers, unless it shall be exhibited  
 " within one year after this chapter shall become a law;  
 " and the premises so appropriated shall be deemed the  
 " property of the state; and no claims, other than those so  
 " exhibited, shall be paid without the special direction of  
 " the legislature."

" CHAP. 274.

" AN ACT in relation to the Erie canal.

Passed May 11th, 1835.

" *The People of the State of New York, represented  
 " in Senate and Assembly, do enact as follows :*

" Section 1. The canal commissioners are hereby  
 " authorized and directed to enlarge and improve the Erie  
 " canal, and construct a double set of lift locks therein,  
 " as soon as the canal board may be of the opinion that  
 " the public interest requires such improvement.

" Section 2. The dimensions to which the canal and  
 " locks shall be enlarged shall be determined by the canal  
 " board.

" Section 3. In passing cities or villages and at other  
 " places, an independent canal may be constructed in-  
 " stead of enlarging the present works, if the canal board  
 " shall decide that the public interests will be thereby  
 " promoted. In all cases regard shall be had in the loca-  
 " tion, to the relinquishment of damages, and to gifts,  
 " grants and donations; but nothing in this section shall  
 " authorize the board to abandon the present canal  
 " through cities or villages, where an independent canal  
 " may be deemed advisable.

" Section 4. It shall be the duty of the canal commis-  
 " sioners to alter and arrange the present feeders, and to  
 " construct such additional feeders and other works as

"they may deem necessary for supplying the enlarged  
"canal with water.

"Section 5. In the construction of the several works  
"authorized by this act, the canal commissioners shall  
"have and exercise all the powers and privileges granted  
"to them by the ninth title of chapter ninth of the first  
"part of the Revised Statutes; and the said ninth title,  
"so far as it may be applicable, shall apply to the works  
"hereby authorized.

"Section 6. The cost of constructing, completing and  
"maintaining the works authorized by this act shall be  
"paid by the commissioners of the canal fund, out of  
"any moneys which may be on hand belonging to the  
"Erie and Champlain canal fund; but the accounts and  
"expenditures under this act shall be kept separate and  
"distinct from the accounts and expenditures for the  
"ordinary repair and maintenance of the Erie canal.

"Section 7. The eighth section of the act entitled 'An  
"Act to provide for the improvement of the canals of this  
"state,' passed May 6th, 1834, is hereby repealed.

"Section 8. The commissioners shall report to the  
"legislature their proceedings under this act within thirty  
"days after the commencement of each session.

"Section 9. After the year one thousand eight hun-  
"dred and thirty-seven, the expenditures by virtue of  
"this act shall be so limited as to leave from the canal  
"revenues, without reference to auction and salt duties,  
"an annual income to the state of at least three hun-  
"dred thousand dollars over and above all ordinary re-  
"pairs and expenditures on the Erie and Champlain canals.

"Section 10. No further expenditures shall be made  
"pursuant to the provisions of this act, than are neces-  
"sary to construct the additional locks and works con-  
"nected therewith, to enlarge the canal in the vicinity  
"of said locks, so far as may be necessary to facilitate

" the passage of boats through the same, and for the purchase of such lands and the extinguishment of such claims for damages, as the commissioners may deem it expedient to secure and extinguish, until a sufficient sum shall have been collected and invested from the canal revenues fully to discharge the Erie and Champlain canal debt.

" Section 11. This act shall take effect on the passage thereof."

##### *5. Certain early acts.*

It was said upon the argument in *Beekman v. Saratoga and Schenectady Railroad Company*, 3 Paige, 45, 60,—the first case where the license to a railroad company to use the right of eminent domain was in question,—that the legislature of New York had then (1831) incorporated about fifteen hundred turnpike, bridge and canal, companies, with the license to take private property.

" Chap. 29." (Laws 1778.)

" AN ACT for regulating impresses of forage and carriages and for billeting troops within this State.

" Passed 2d. of April, 1778.

" *Be it enacted by the People of the State of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same.* That from and after the publication of this act no impresses of forage (under which term is comprehended hay, straw, barley, rye, oats, indian corn and buckwheat) shall be made in this State by the commissary or deputy commissary of Forage, or by any forage master of the United States; but whenever a sufficient quantity of forage cannot be purchased therein or procured from the neighboring States by the commissary or deputy commissary of forage, or by the forage masters for the use

"of the army in this State, that then on due proof  
"thereof on oath, and application made to any justice of  
"the peace resident in the town, manor, district or pre-  
"cinct in which such impress is required, it shall and  
"may be lawful for the said justicee, and he is hereby  
"required immediately thereupon, by warrant or warrants  
"under his hand, to appoint such and so many discreet  
"and prudent inhabitants of this State, actually resident  
"in the said town, manor, district or precinct, and there-  
"by to authorise and direct him or them, to distrain and  
"take from the inhabitants of the said town, manor,  
"district or precinct the quantity of forage to  
"be specified in the said warrant. *Provided* there  
"shall be so much forage therein over and above what  
"shall on inquiry by such person or persons be found in  
"his or their opinion necessary for the subsistence of the  
"respective families and stock *bona fide* kept by each in-  
"habitant in such town, manor, district or precinct, and  
"to deliver to the commissary or deputy commissary of  
"forage or to the forage-master a certificate in writing of  
"the quantity of forage specifying each article thereof  
"which shall be by the said person or persons so taken  
"and distrained and the name of the inhabitants respect-  
"ively from whom taken, together with the current price  
"thereof. But it shall not be lawful for any commissary  
"or deputy commissary of forage or forage master to re-  
"move the forage so taken from any inhabitant, until  
"such time as a copy of said certificate shall be by him  
"or them delivered to the said inhabitant or his wife or  
"one of his children at years of discretion; *and to the end,*  
"That the said impresses may be made with greater just-  
"ice and impartiality."

(Same act): " *Provided always, nevertheless,* That in  
"cases of an incursion of the enemy, whereby a sudden  
"movement of the American army or armies within this

" State may be necessary, and the urgency of the occasion shall not admit of the delays incident to the due execution of this act, it shall and may be lawful for the general or commander of such army or armies respectively, by warrant under his or their hand respectively, to impress a necessary supply of forage *pro hac vice* within this State any thing in this act to the contrary thereof in any wise notwithstanding."

(Same act): "*And be it further enacted by the authority aforesaid,* That no impress of teams, horses or carriages, or drivers for the same shall be here after made within this State, on any pretence whatever without warrant from a justice of the peace for that purpose first had and obtained.

*And be it further enacted by the authority aforesaid,* That whenever the public service shall require a greater number of teams, horses and carriages, with drivers for the same, that can be supplied by the quartermaster of any part of the army within this State, it shall and may be lawful for any one of the justices of the peace (on proof thereof, and application as aforesaid) resident in the city, town, manor, district or precinct, in which such impress is required, to grant his warrant under his hand and seal, directed to any of the constables within the said city, town, manor, district or precinct, for the impressing of such number of teams, horses and carriages with drivers for the same, as the public service shall then in the judgment of the said justice, actually necessarily require, to be furnished by the said city, town, manor, district or precinct, in addition to the teams, horses and carriages then supplied by the said quartermaster: and which said warrant shall contain the names of the several persons who in the judgment of the said justice (having due respect to the estate and ability of each respective person, and the number of

“ days or times their respective teams, horses or carriages  
 “ shall previous thereto have been impressed or have been  
 “ in the service) ought to furnish teams, horses or car-  
 “ riages with drivers, and the number of teams, horses,  
 “ carriages or drivers, to be furnished by each respective  
 “ person, and the number of days for which the same shall  
 “ be retained in service, or the distance to which each  
 “ respective team, horse or carriage shall be compelled to  
 “ go; and the said constable shall be allowed the sum of  
 “ two shillings for each team he shall procure in con-  
 “ sequence of such warrant, for his fees and services, to  
 “ be paid by the officer or other person requiring such  
 “ impress to be made.

“ *And be it further enacted by the authority afore-  
 “ said,* That on performance of the service or services so  
 “ to be performed by the said impressed teams, horses,  
 “ carriages and drivers, the quartermaster or other officer  
 “ attending and requiring the said service, shall either  
 “ immediately pay to the owners or drivers of the teams,  
 “ horses and carriages so impressed, according to the com-  
 “ mon usual and then accustomed rate or fare allowed  
 “ for the like services, or otherwise satisfy the said  
 “ owners of or drivers for such services, so performed.”

“ Chap. 32.” (Laws 1779).

“ An Act to amend an act for regulating impresses of  
 “ forage and carriages and for billeting troops within this  
 “ State.

“ Passed the 12th of March, 1779.

“ WHEREAS, no effectual provision is made in the said  
 “ act in cases where persons shall suffer their teams or  
 “ carriages to be out of repair with intent to prevent them  
 “ from being impressed in the public service.

“ *Be it enacted by the People of the State of New  
 “ York represented in Senate and Assembly and it is*

*" hereby enacted by the authority of the same, That where any of the carriages to be impressed, the tackling and necessaries thereto shall be defective through the negligence, or default of the owner it shall and may be lawful for the person upon whose application the impress shall be made immediately to have the same repaired in the best manner he can, and to sue such owner before any justice of the peace, within the town manor district or precinct wherein such owner shall reside, and if there shall be no justice of the peace in such town manor precinct or district, then before the nearest justice of the peace for the amount of the expence thereof, and the said justice is hereby directed to give judgment for the said person for the said sum as he shall prove to have expended to compleat the said carriage and team with costs of suit and a reasonable allowance to the said person for his trouble in procuring the same."*

*" (Same act.) And whereas in any by the said act the justices of the peace are not authorized to grant a warrant for impressing teams unless proof shall be previously made, that the public service requires a greater number of teams, horses and carriages, with drivers for the same than can be supplied by the quarter master of any part of the army within this State. And whereas, the obtaining such proof is frequently attended with delay injurious to the public service.*

*" Be it therefore enacted by the authority aforesaid, That it shall be lawful for the justices of the peace respectively, to dispense with such proof and in their discretion to grant warrants for impressing teams, carriages, horses and drivers whenever upon application they shall respectively conceive the public service to require the same, anything in the said act to the contrary notwithstanding."*

## “Chap. 67” (Laws 1780.)

“That it shall and may be lawful to and for the person  
 “administering the government of this State for the time  
 “being, from time to time and whenever he shall deem  
 “the emergency and occasion to require the same, to grant  
 “warrants of impress, under his hand, to any officers and  
 “persons, for impressing teams, carriages, horses, oxen  
 “and drivers, boats, vessels, materials, provisions and  
 “other necessaries for the use and service of the army,  
 “in such manner as he shall deem expedient and neces-  
 “sary,” \* \* \* “That the officer or person making  
 “such impress shall give to the person from whom any  
 “of the matters or articles aforesaid shall be impressed, a  
 “certificate thereof, and that each and every person from  
 “whom any of the matters or articles aforesaid, shall be  
 “impressed, shall be entitled to receive from the public  
 “officer authorized to pay the same, the current price for  
 “the articles or matters impressed, or for the use or hire  
 “thereof, as the case may be.”

## “Chap. 31” (Laws 1779.)

“11. *Be it further enacted by the authority afore-  
 said,* That the commissioners or the major part of them,  
 “in their respective towns manors, districts or pre-  
 “cinets, for which they shall be chosen commissioners,  
 “are hereby empowered and authorized to regulate the  
 “roads already laid out, and if any of them shall appear  
 “inconvenient and an alteration necessary, and the same  
 “be certified upon oath by twelve principal freeholders of  
 “such of the said counties, wherein the alteration may be  
 “required, to alter the same in such manner as a majority  
 “of commissioners in such town manor district or precinct  
 “shall judge meet and convenient; and also to lay out  
 “such other public highways and roads, as they or the  
 “major part of them, shall judge necessary, as well for

"travellers as for the inhabitants of each town manor  
"district or precinct.

"Provided, nevertheless, That where any roads shall  
"be laid out through inclosed or improved lands, the  
"owner or owners shall be paid the true value of the  
"land, so to be laid out into an highway or road with  
"damages as he, she or they may sustain by reason  
"thereof, in manner following, viz.

"The value of the said land, and the amount the damages  
"the owner or owners thereof may sustain as aforesaid, shall  
"be determined, and the true value set and appraised by  
"two justices of the peace, and by the oaths of twelve  
"principal freeholders, not having an interest in the land  
"so to be laid out into an highway or road, and the said  
"freeholders shall be summoned by any constable of the  
"town manor district or precinct in which such road or  
"highway shall be laid out as aforesaid, by virtue of a  
"warrant to be issued by the said two justices of the  
"peace for that purpose;" \* \* \*

"Provided always, That no road or highway shall be  
"laid through any orchard or garden, without the con-  
"sent of the owner or owners thereof, any thing herein  
"contained, notwithstanding.

"Chap. 40" (Laws 1792.)

"AN ACT for establishing and opening lock navigations  
"within this State.

"Passed the 30th. of March 1792.

"WHEREAS a communication by water, between the  
"southern northern and western parts of this State will  
"encourage agriculture, promote commerce, and facilitate  
"a general intercourse between the citizens. Therefore"  
"And be it further enacted by the authority aforesaid,  
"That each of the said corporations, by president and  
"directors, or by any agent, superintendent, engineer or

" other person employed in the service of such corporation may enter into and upon all and singular the land, " and lands covered with water where they shall deem it " proper to carry the canals and navigation herein before " particularly assigned to each of the said corporations, " and to lay out and survey such route and tracts as shall " be most practicable for effecting navigable canals as " aforesaid by means of locks and other devices, doing " nevertheless as little damage as possible to the grounds " and inclosures in and over which they shall pass, and " thereupon it shall and may be lawful to and for the said " president and directors respectively, to contract and " agree with the owners of any lands and tenements for " the purchase of so much thereof as shall be necessary " for the purpose of making, digging and perfecting the " said canals, and for erecting and establishing all the " necessary locks, works, and devices to such navigation " belonging, if they can agree with such owners, but in " case of disagreement, or in case the owner thereof shall be " feme covert, under age, non compos mentis, or out of " the State, then it shall and may be lawful to and for the " said president and directors to apply to the chancellor " of this State, who upon such application is hereby au- " thorized and empowered, enjoined and required to frame " and issue one or more writ or writs as occasion shall re- " quire, in the nature of a writ of ad quod damnum, to " be directed to the sheriff of the county in which such " lands and tenements shall be, commanding him that by " the oaths of twelve good and lawful men of his baili- " wick, who shall be indifferent to the parties, he shall " enquire, whether the person or persons owning any " lands and tenements necessary to be used by the said " president and directors, or which shall be injured in " establishing the said canals and navigation, which per- " son or persons shall be named, and which lands and

“ tenements shall be described in such writ or writs which  
“ will suffer and sustain any, and what damages by rea-  
“ son or means of taking any lands, tenements, mill, mill-  
“ pond, water, water-course, or other real hereditaments  
“ necessary for the use of the said canals and navigation  
“ and the works and locks thereto belonging, and to re-  
“ turn the same writ, together with the finding of the said  
“ jury, to the court of chancery of this State without de-  
“ lay after such finding; and upon such writ being de-  
“ livered to the said sheriff, he shall give at least fourteen  
“ days notice in writing to all and every of the owners  
“ and occupants of the premises who shall be within his  
“ bailiwick, and shall also affix a copy of such notice on  
“ the door of the court house or gaol within his bailiwick,  
“ and if there is no court house or gaol, then on the door  
“ of some noted tavern within the same, of the lands and  
“ tenements in the said writ described, of the time of ex-  
“ ecuting the same, and shall cause to come upon the  
“ premises at the time appointed, twelve good and lawful  
“ men of his bailiwick who shall be selected in such man-  
“ ner as struck juries usually are, to whom he shall  
“ administer an oath, that they will diligently enquire  
“ concerning the matters and things in the said writ  
“ specified and a true verdict give according to the  
“ best of their skill and judgment without favour or  
“ partiality, and therenpon the said sheriff and in-  
“ quest shall proceed to view all and every the  
“ lands and tenements in such writ specified, and  
“ having considered the quantity of land, land covered  
“ with water, mills, buildings or other improvements that  
“ shall be necessary to be vested in the said corporations  
“ for the purposes aforesaid, and any watercourse then  
“ existing, the use whereof will be necessary for the pur-  
“ pose aforesaid, they shall cause the same to be minutely  
“ and exactly described by meets and bounds, or other

" particular descriptions, and shall value and appraise the  
" injury or damages, if any, which the owner or owners  
" of the said lands, tenements, mills, water, watercourses,  
" buildings or improvements will according to their best  
" skill and judgment, sustain and suffer by means of so  
" much of the said lands and tenements being vested in  
" the said corporations, or by means of such improvements  
" being destroyed, or rendered useless or of less value, or  
" by means of the said corporations being permitted to  
" turn such water to fill their canals and locks, or by  
" means of the said corporations being permitted to en-  
" large any millpond, millrace, or other water course, and  
" to use the same as and for part of their said canals and  
" navigation, or by any other means whatsoever, defining  
" and ascertaining as well all such lands and tenements,  
" liberties and privileges so to be vested in either of the  
" said corporations the several sums at which the said in-  
" juries and damages shall be so assessed: And the said  
" sheriff and jury shall make an inquisition, under their  
" hands and seals, distinctly and plainly setting forth all  
" the matters and things aforesaid; and the sheriff shall  
" forthwith return the same together with the said writ  
" to the said court of chancery, and thereupon the chan-  
" cellor shall examine the same, and if the said writ shall  
" appear to have been duly executed, and the return  
" thereof be sufficiently certain to ascertain the lands and  
" tenements, rights, liberties and privileges intended to be  
" vested in the said corporations, and the several compen-  
" sations awarded to the owners thereof, then the said  
" court shall enter judgment that the said corporation  
" paying to the several owners as aforesaid the several  
" sums of money in the said inquisition assessed, or bring-  
" ing the same into the said court, over and besides the  
" costs of such writs and of executing and returning the  
" same, shall be entitled to have and to hold to them and

" their successors and assigns for ever, all and every the  
 " lands, tenements, rights, liberties and privileges in the  
 " said inquisition described, as fully and effectually, as if  
 " the same had been granted to them by the respective  
 " owners thereof. And if any of the returns so to be made  
 " shall not be sufficiently certain for the purposes afore-  
 " said, the said court shall award an inquisition de novo."

*This is the first act, so far as I know, where the power to take property by the right of eminent domain was delegated to a corporation. Of course, town and municipal and other public officers had long before used such power, but this is the first where it is given to a business corporation.*

*Under this act the Western Inland Lock Navigation Company built canals around the Fort Herkimer rapids and the Little Falls of the Mohawk : between the Mohawk and Wood Creek at Fort Stanwix, now Rome, and around the falls of the Seneca River, now Seneca Falls.*

*When New York built the Grand Canal the property of the Western Inland Lock Narigation Company was all taken by the State. (Chapter 262, Laws 1817, Section 4, ante, p. 99.) The section above quoted was amended by Chapter 101 of the Laws of 1798, so as to read as follows :*

" That so much thereof of the seventh section of an act  
 " entitled 'An act for establishing and opening lock navi-  
 " gation within this State,' as provides for the assess-  
 " ment of damages to any owner or proprietor of land  
 " therein mentioned, by writ in nature of a writ of ad  
 " quod damnum, shall be, and is hereby repealed ; and in  
 " place thereof, it shall be the duty of the respective cor-  
 " porations, created by the said recited act previously to  
 " any appraisement as hereinafter provided, to cause a  
 " survey and map to be made of the ground in their esti-  
 " mation requisite; and which they may be by law

"authorised to approximate for the uses, specified  
"in the said recited act and the acts amending the  
"same; in the field book of which survey and  
"map shall be distinguished the land of the several  
"owners and occupants, appropriated or intended to be  
"appropriated as aforesaid, and the quantity thereof; and  
"shall exhibit such field book and map to the justices of  
"the Supreme Court or any two of them; and if such  
"justices shall be of opinion that the land so surveyed is  
"not more than what is requisite for the said uses, and  
"may be lawful for the said respective corporations to  
"appropriate, they shall certify such field book and map,  
"under their hands and seals, and cause the same to be  
"filed in the office of the clerk of the county in which the  
"same lands, or the greater part thereof may be situated,  
"thereto remain as a public record. And it shall thereupon  
"be lawful for the said justices, by a writing under hands  
"and seals, to appoint not less than three nor more than  
"five discreet persons, none of whom shall be interested  
"in such corporation, or the lands so surveyed, as afore-  
"said, to appraise the premises specified in such field  
"book: And it shall be the duty of the appraisers, or a  
"majority of such as shall be appointed to examine the  
"land of each owner or occupant so appropriated, and to  
"ascertain the value thereof, and the damages each may  
"sustain by such appropriation; and to make a regular  
"entry of such valuation and assessment of damages in a  
"book to be by them kept for that purpose, and certify  
"the same under oath to be a true, fair and impartial  
"valuation and assessment, to the best of their belief; and  
"shall thereupon cause such book, the execution of the  
"said certificate being first duly proven or acknowledged,  
"to be filed in the office of such clerk as aforesaid, there  
"to remain as a public record: And the said corporation  
"and their successors upon paying to the several owners

"the sums of money so assessed as aforesaid, together  
 "with the costs of appraisement, shall immediately be  
 "vested with the fee simple of the lands and tenements  
 "mentioned and specified in such field book, filed in the  
 "office aforesaid."

"Chap. XVI. (Laws 1797.)

"AN ACT *to amend the act entitled 'An act to prevent the bringing in and spreading of infectious diseases in this State.'*

(p. 26.) "And be it further enacted, That from and after the first day of July next, no person shall dress sheep or lamb skins, or manufacture glue, nor shall any soap boiler or tallow chandler, or starch maker, or maker or dresser of vellum, carry on any of their processes or operations of their said trades, which produce impure air or offensive smells, such as trying or melting of fat or tallow, boiling soap, fermenting grain or other substances for starch, washing, fermenting, or oiling skins for vellum at any place within the city of New York south of the south side of Grant street, and of the south side of said street, continued until it intersects the easterly line of Mulberry street, and south of the west line from the intersection aforesaid, continued to Hudson's river, under the penalty of one hundred dollars for each offence."

(p. 26.) "And be it further enacted, That it shall be lawful for the mayor, aldermen and commonalty of the said city of New-York, to treat and agree with such of the owners or proprietors of the manufactories, trades or businesses prohibited as aforesaid, for the taking down, removal and replacing the vessels and fixtures used in such manufactories and trades in such part of the said city in which such manufactures and trades may by this

" act be established and prosecuted; and in case no agreement can be made with the owners or proprietors of any such manufactoryes or persons prosecuting such trades as aforesaid, then and in such case it shall and may be lawful to and for the said mayor and recorder, and any two or more of the said aldermen by virtue of this act, by a precept under their hands and seals, to command the sheriff of the said city and county of New-York, to impannell and return a jury of twelve freeholders, to appear before the mayor's court of the said city at any term, not less than three weeks from the date of such precept, to enquire into and ascertain the reasonable compensation which should be made to such owners or proprietors for such taking down, removal and replacing as aforesaid; which said jury being first duly sworn, faithfully and impartially to enquire into and ascertain such compensation, shall proceed to ascertain the same; and the sum found by their verdict shall be paid by the said mayor, aldermen and commonalty of the said city of New-York, to the said owners or proprietors, and shall be deemed as part of the contingent expenses of the said city, to be raised, levied and collected as the other contingent expenses of the said city are levied, collected and paid. *Provided always,* that after such decision by the jury, it shall be optional with the said mayor, aldermen and commonalty either to pay the amount of the compensation found by the jury, or within one month thereafter, at their proper expence to take down, remove and replace such vessels and fixtures in such place as the owners and proprietors thereof shall direct, and in such part of the city as by this act such manufactoryes of trades as aforesaid may be established."

"Chap. LXXXVII." (Laws 1897.)

"AN ACT for constructing a road and establishing  
"and erecting turnpikes between the city of Albany,  
"and the town of Schenectady.

"Passed the 1st day of April, 1797.

"WHEREAS a good and sufficient road between the city  
"of Albany and the town of Schenectady will manifestly  
"tend to the advantage of the citizens of this State.  
"Therefore

"Be it enacted by the people of the State of New  
"York represented in Senate and Assembly, That there  
"shall be established a company of stockholders for the  
"purpose of making a good and sufficient road to begin "  
"etc.

(p. 196) "And be it further enacted, that the said  
"corporation by the President and Directors, or by any  
"agent, superintendent, artist or other person employed  
"in their service may enter into and upon any land where  
"they shall deem it proper to construct the said road, and  
"to lay out and survey such routs and tracts as shall be  
"most practicable for effecting a good and sufficient road  
"between the places aforesaid, doing nevertheless as little  
"damage as possible to the grounds and inclosures in and  
"over which they shall pass, and the said President and  
"Directors may contract and agree with the owners of any  
"lands and tenements for the purchase of so much there-  
"of as shall be necessary for the purpose of making,  
"digging and perfecting said road, and for erecting and  
"establishing gates, toll houses, and all other works and de-  
"vices to such road belonging, if they can agree with such  
"owners, but in case of disagreement, or in case the owner  
"thereof shall be *feme covert*, under age, *non*  
"*compos mentis*, or out of the county, then it

"shall and may be lawful to and for the said  
"President and Directors to apply to one of the  
"judges of the court of common pleas in and for the city  
"and county of Albany, who upon such application is  
"hereby authorized and empowered and required to frame  
"and issue one or more writ or writs as occasion shall re-  
"quire, in the nature of a writ of *ad quod damnum*, to  
"be directed to the sheriff of the county of Albany,  
"commanding him that by the oath of twelve good  
"and lawful men of his bailiwick, who shall be  
"indifferent to the parties, he shall enquire, whether  
"the person or persons owning any lands and  
"tenements necessary to be used by the said  
"President and Directors, or which shall be injured in  
"establishing the said road and turnpike or turnpikes,  
"which person or persons shall be named, and which  
"lands and tenements shall be described in such writ or  
"writs shall suffer and sustain any, and what damages by  
"reason or means of taking any lands, tenements or other  
"hereditaments necessary for the use of the said road and  
"the works thereto belonging, and to return the same  
"writ, together with the finding of the said jury, to the  
"next court of common pleas held for the said city and  
"county after such finding; and upon such writ being  
"delivered to the said sheriff, he shall give at least four-  
"teen days notice in writing to all and every of the  
"owners and occupants of the premises who shall be  
"within his bailiwick, and shall also affix a copy of  
"such notice on the door of the court house in said  
"county of the lands and tenements in said writ described,  
"of the time of executing the same, and shall cause to  
"come upon the premises at the time appointed, twelve  
"good and lawful men of his bailiwick to whom he shall  
"administer an oath, that they will diligently enquire  
"concerning the matters and things in the said writ

" specified and a true verdict give according to the best  
" of their skill and judgment without favour or partial-  
" ity, and thereupon the said sheriff and inquest shall  
" proceed to view all and every the lands and tenements  
" in such writ specified, and shall cause the same to be  
" minutely and exactly described by meets and bounds,  
" or other particular descriptions, and shall value and ap-  
" praise the injury or damages, if any, which the owner  
" or owners of the said lands or improvements will ac-  
" cording to their best skill and judgment sustain and  
" suffer by means of so much of the said lands and  
" tenements being vested in the said corporation, and the  
" said sheriff and jury shall make an inquisition, under  
" their hands and seals, distinctly and plainly, setting  
" forth the real damages sustained as aforesaid, and at  
" the court of common pleas, then next following the  
" sheriff shall return the same, and if the said writ shall  
" appear to have been duly executed, and the return  
" thereof be sufficiently certain to ascertain the lands and  
" improvements, rights, liberties and privileges intended  
" to be vested in the said corporation, and the several  
" compensations awarded to the owners thereof, then the  
" said court shall enter judgment that the said corpor-  
" ation paying to the several owners as aforesaid the sev-  
" eral sums of money in the said inquisition assessed, or  
" bringing the same into the said court, over and besides  
" the costs of such writs and of executing and returning  
" the same, shall be entitled to have and to hold to them  
" and their successors and assigns for ever, all and every  
" the lands, improvements, rights, liberties and privileges  
" in the said inquisition described, as fully and effectually,  
" as if the same had been granted to them by the re-  
" spective owners thereof; and if any of the returns so to  
" be made shall not be sufficiently certain for the purposes

"aforesaid, the said court shall award an inquisition de  
"novo.

*This is the first act which incorporated a turnpike company.*

*It will be observed that the provision for the taking of land is copied almost word for word from the provision in the charter of the Western Inland Lock Navigation Company, which had not then as yet been changed.*

*Turnpike corporations after this became very numerous, always being created by special act until after 1846, and the above provision was quite immediately changed. The following is a fair specimen of what became the usual provision.*

"Chap. LXXIX." (Laws 1800.)

"AN ACT to establish a Turnpike corporation for improving and making a Road from the Town of Salisbury, in the State of Connecticut, to Wattles's Ferry on the Susquehannah river."

(p. 159). "And be it further enacted, That the said corporation, by the president and directors, or by any agent, superintendent, artist or other person employed in their service, may enter into any land where they deem it proper to construct the said road, and to lay out and survey such routes or tracts as shall be most practicable for effecting a good and sufficient road between the places aforesaid; and the said president and directors may contract with the owners of the said land for the purchase of so much thereof as shall be necessary for the purpose of making the said road, and for erecting and establishing gates, toll houses and all other works to the said road belonging, the said president and directors paying the owner or owners, or occupant of the land to be

" laid out as part of the road, such reasonable sum for damages as may be agreed on: And in case of disagreement between the parties as to the said damages, the same shall be determined by an appraisement, to be made on oath of three; or if they disagree, of two indifferent freeholders, to be mutually chosen, or (if the owners or occupants of the said land refuse or neglect to join in the choice) to be appointed by any judge of the court of common pleas of the county in which the lands or property shall be, provided the said judge shall not be interested in the said dispute."

#### *6. The first railroad.*

"Chap. 253." (Laws 1826.)

"*AN ACT to incorporate the Mohawk and Hudson Rail Road Company.*

"Passed April 17, 1826.

"1. *Be it enacted by the People of the State of New York represented in Senate and Assembly,* "That Stephen Van Rensselaer and George William Featherstonhaugh, with such other persons as shall associate with them for that purpose, be and are hereby constituted a body politic and corporate, by the name of the Mohawk and Hudson Rail Road Company, for the purpose of constructing a single or double railroad or way betwixt the Mohawk and Hudson Rivers; commencing from the Hudson river at any point within the bounds of the city of Albany, or within half a mile north of the same, and extending to any point in the city of Schenectady, or within half a mile west of the same,"

(p. 287) "7. *And be it further enacted,* That the said corporation be, and they hereby are authorised by their agents, surveyors, and engineers, to cause such

" examinations and surveys to be made, of the ground  
" lying betwixt the Mohawk and Hudson rivers, within  
" the aforesaid limits prescribed by the first section of  
" this act, as shall be necessary to determine the most  
" advantageous route, place or places, for the proper  
" line, course, road and way whereon to construct their  
" single or double rail road or ways: and it shall be law-  
" ful for the said corporation to enter upon and take  
" possession of, and use all such lands and real estate, as  
" may be indispensable for the construction and mainte-  
" nance of their single or double rail road or ways, and  
" the accommodation requisite and appertaining to them:  
" and may also receive, hold and take, all such voluntary  
" grants and donations of land and real estate, as shall  
" be made to the said corporation to aid in the construc-  
" tion, maintenance and accommodation of their single or  
" double rail road or way: *Provided*, That all lands or  
" real estate, thus entered and taken possession of, and  
" used by the said corporation, and which are not dona-  
" tions, shall be purchased by the said corporation of  
" the owner or owners of the same, at a price to be mutually  
" agreed upon betwixt them: and in case of a disagree-  
" ment of the price, it shall be the duty of the governor  
" of this state, upon a notice to be given to him by the  
" said corporation, to appoint three commissioners, of  
" whom, one at least shall be a resident of the county of  
" Albany, and one of the county of Schenectady, who  
" shall be persons not interested in the matters to be  
" determined by them, to determine the damages which  
" the owner or owners of the land or real estate, so entered  
" upon by the said corporation, has or have sustained by  
" the occupation of the same; and upon payment of such  
" damages, together with the costs and charges attending  
" the appraisement by the said corporation, the said com-  
" missioners being allowed each three dollars per day,

"while thus employed; or upon the said corporation  
 "depositing in any bank in the city of Albany, the  
 "amount of such damages, together with the costs and  
 "charges aforesaid, to the credit of the person or persons  
 "to whom the commissioners may have awarded them,  
 "the proper officers of such bank giving notice to such  
 "person or persons, by letter, of such deposit being made  
 "by the said corporation; then the said corporation shall  
 "be deemed to be seized and possessed of the fee simple  
 "of all such land or real estate as shall have been  
 "appraised by the said commissioners: and it shall be  
 "the duty of the said commissioners, or of a majority of  
 "them, to deliver to the said corporation a written state-  
 "ment of the award or awards they shall make, with a  
 "description of the land or real estate appraised, to be  
 "recorded by the said corporation, in the clerk's office of  
 "the county where the land or real estate may lie."

*Construed in*

Bloodgood *v.* The Mohawk and Hudson Railroad Company, 14 W. R. 51; 18 W. R. 9. July, 1835; Oct'r, 1837.

7. The act construed in *Beekman v. Saratoga and Schenectady Railroad Company*, 3 Paige, the FIRST case.

This act—chapter 43 of the laws of 1831—is, so far as the taking of land is concerned, identical with the last act—the charter of the Mohawk and Hudson Rail Road Company, except before the direction to the governor to appoint commissioners, these words are put in—“and be-  
 “fore the making of any portion of the road on said  
 “land.”

So that the whole clause reads:—

“And in case of a disagreement of price, *and before the*  
 “*making of any portion of the road upon said land*, it  
 “shall be the duty of the governor of this State to ap-

" point three commissioners, one of whom shall be a resident of the county of Schenectady, and one of the county of Saratoga, who shall be persons not interested in the matters to be determined by them, to determine the damages which the owner or owners of the land or real estate so entered upon by the said corporation, may have sustained, or shall be likely to sustain, by the occupation of the same;"

The last words in italics are also not in the former act.

8. *Acts construed in Watson v. New York Central Railroad Company, 47 N.Y., 157.*

" Chap. 242

" *AN ACT to provide for the construction of a rail-road from Attica to Buffalo.*

" Passed May 3, 1836."

" Real estate. § 7. The corporation is hereby empowered to purchase, receive and hold such real estate as may be necessary for accomplishing the objects for which it is granted; and may, by their agents, surveyors and engineers, enter upon and take possession of and use, all such lands and real estates as may be indispensable for construction and maintenance of their single or double rail-road or way, and the erection of buildings necessary for stationary engines; and may also receive hold and take, all such voluntary grants and donations of land and real estate, for the purpose of said road, as shall be made to the said corporation, to aid in the construction, maintenance and accommodation of the said road; but all lands or real estate thus entered upon, which are not donations, shall be previously purchased by the said corporation of the owner or owners of the same, at a price to be mutually agreed upon between them; and in

" case of any disability on the part of the *owners* of such,  
" to contract or sell the same, on account of insanity, infancy  
" or otherwise, refusal to sell, or disagreement as to price,  
" and before making any portion of such road on said land  
" the said corporation shall present a petition to the first  
" or senior judge of the county in which such land may  
" lie, setting forth the necessity of such land for the making  
" of such road, and the failure to obtain the same by agree-  
" ment, with the reasons thereof, and the name and resi-  
" dence of each *OWNER*, if known, together with a map,  
" plan, and profile of the road, and praying for the appoint-  
" ment of a jury of appraisers. The said judge shall  
" thereupon direct reasonable notice in writing, to be given  
" to the *OWNERS* of such lands of the time of drawing of  
" such jury, which shall be at the clerk's office in the  
" county where the lands are situate, and upon due proof  
" thereof, and hearing the parties, or such of them as may  
" attend, and object to the regularity of the proceedings  
" on the part of the said corporation, such judge, together  
" with the clerk of said county, shall draw from the grand  
" jury box of the county the names of twelve competent  
" and disinterested jurors, who, by an order to be made  
" by such judge, and entered in the common rule book of  
" the court of common pleas, shall be appointed appraisers  
*"of the damage to be sustained by such owners in the  
construction of such road:* and should any person or  
" persons so designated refuse or neglect to serve on said  
" jury, or be disqualified, the vacancy or vacancies shall  
" be filled by said judge in manner aforesaid. Said ap-  
" praisers shall before entering upon the duties of their  
" office take the oath prescribed by the sixth article of the  
" constitution. The said judge shall appoint a time and  
" place for said appraisers to meet, and shall cause due  
" notice in writing to be served upon such *owners*, or, in

" case of absence, to be left at their usual place of residence,  
" if within the county, and if not, to be put up in some  
" conspicuous place on the premises, of the time and place  
" of meeting for the purpose of completing said appraisement,  
" and shall also cause due notice to be given to the  
" said appraisers of the time and place of meeting, and  
" said appraisers shall at such time proceed to view the  
" premises; they shall have power to examine witnesses  
" under oath, which oath any one of the said appraisers  
" is hereby authorised to administer, and shall, without  
" fear, favor or partiality, *assess the value of the land*  
" *taken, and the damages such OWNERS may sustain by*  
" the taking of their lands, by injury to buildings, and in  
" the construction of such road, without any deduction on  
" account of any real or supposed benefit or advantage  
" which such OWNERS of such lands may derive by the  
" construction of such road. They shall make an inquisition  
" or certificate of their appraisement, specifying the  
" items appraised, with a map thereof, and shall present  
" the same, with the testimony taken, to the county clerk,  
" who shall file them in his office. The ballots drawn from  
" the jury box shall be replaced by the county clerk.  
" Upon proof to the said judge, within thirty days after  
" the filing of the inquisition of the jury, of payment to  
" the OWNER or OWNERS, or of depositing to THEIR credit  
" in such bank as the judge shall direct of the amount of  
" such appraisement, and of all costs and expenses attending it, including reasonable counsel fees (to be taxed and certified by said judge), the judge shall make an order  
" particularly describing the land, and reciting the appraisement and the mode of making it; which *order*  
" shall be recorded in the office of the clerk of the county  
" in which the land is situated, in like manner as if the  
" same were a deed of conveyance; *and the said corpora-*

*"tion shall thereupon become possessed of such land  
"during the continuance of the corporation, and may  
"use the same for the purposes of said road."*

The act of 1843 referred to in the opinion of the court (47 N. Y., 161) simply applied to the Buffalo and Attica Railroad Company a provision of section seven of the act of 1836, also referred to in the opinion, which authorized the vice-chancellor of the eighth circuit to increase or lessen the amount of the appraisement.

### **BRIEF OF THE ARGUMENT.**

The plaintiff, in error, claims, as I read its assignments of error, three things:

*First.*—That it has a contract which gives it the right to build its road to Lake Ontario OR the St. Lawrence River, and take the necessary land by the delegated right of eminent domain—which contract Sovereign New York cannot break.

*Secondly.*—That by the filing of its map across Township fifteen, and the service of its notices, it has acquired a lien upon the strip of land described in the map—which cannot be taken from it at all, and certainly not without compensation.

The latter branch of this proposition the appellate division of the supreme court of New York held in its favor.

*Thirdly.*—That chapter 220 of the laws of New York of 1897 does not command proceedings which are due process of law within the meaning of the fourteenth amendment, and is therefore unconstitutional and void.

### **FIRST.**

**That it has a contract which gives it the right to build its road to Lake Ontario OR the St. Lawrence River, and take the necessary land by the delegated right of eminent domain—which contract Sovereign New York cannot break.**

The plaintiff in error bought in 1882 the railroad of the Adirondack company, which then extended and still ex-

tends from Saratoga Springs to North Creek and no further, and under the reorganization laws of New York (printed *ante*, pp. 20-23) it organized itself with a life of a thousand years.

By the same acts it then and thus acquired all the rights of the Adirondack Company.

That company was organized under the general railroad act of New York in 1863 (R. 71, and see the laws, *ante*, pp. 13-20).

In 1892 the plaintiff in error applied to the railroad commissioners of New York and obtained from them under section 83 of the then railroad law, a certificate, which that law says "shall be irreversible by such board" (*ante*, p. 29), that it need not extend its road beyond North Creek (R. 19; in evidence R. 72; *ante*, pp. 7, 29).

The effect of this is to make its life secure for NINE HUNDRED AND EIGHTY-THREE YEARS, although it builds no more road—and the claim of course must be that at any time *within the nine hundred and eighty-three years* it can build its road, and no land, no matter how little, can be shielded from being taken by it.

To grasp the full force of this claim it must be understood that the line is not fixed at all, except that one terminus must be North Creek and the other "some point on Lake Ontario or River St. Lawrence" (*ante*, p. 16), which enables it to swing the line around so that the other point of it may vary some two hundred miles.

Here then is a fan shaped piece of the earth's surface—the outer arc of which is two hundred miles—and within that enormous territory Sovereign New York cannot put a park, nor cede an acre to the United States for a fort or a lighthouse for *nine hundred and eighty-three years*.

That is the claim.

The Adirondack company came into being by virtue of

the general railroad law of New York in 1863. Since 1830 the Revised Statutes of New York have reserved the right to alter and amend (*ante*, p. 13). Since 1846 the same thing has been in the Constitution (*ante*, p. 12).

And the general railroad law, under which the defendant came into being, reserved the right to "annul or dissolve" the Adirondack Company and the plaintiff in error (*ante*, p. 13).

When, therefore, Sovereign New York, in 1895, speaking through her Constitution, said that the lands in township fifteen should "*not be taken by*" the plaintiff in error she broke no contract.

Sinking Fund Cases, 99 U. S., 700, 742.

Tomlinson *v.* Jessup, 15 Wall., 454, 457.

People *v.* O'Brien, 111 N. Y., 1, 48.

As much was said below about *The People v. O'Brien*, 111 N. Y. 1, we can perhaps illustrate best by taking the case of the Broadway Surface Railroad Company.

When it was said that The Broadway Surface Railroad Company had the *right* to operate a railroad upon that portion of the earth's surface which was occupied by the street Broadway, *three*, different, things, might have been and in the brief used by the defendant below, as I read it, *were*, meant. *Two* of these were *property*. *The third* was *not* *property*.

When it was said that it had the FRANCHISE to operate a railroad upon that portion of the earth's surface which was occupied by the street Broadway, *two* different things might have been, and in the brief used by the defendant below, as I read it, *were*, meant. *One* of these was *property*. *The other* was *not* *property*.

That is to say. There had to be got.

1. From the *owner* of that portion of the earth's surface, if not the fee, at least an easement to use it for a

railroad. *It so happened* that the title was in the city of New York *in trust for the State*, and that *therefore* the State had to join in the grant. But this was not in the way of its sovereignty. It was simply being in the way of being a *cestui que trust*, like any human being. Such a grant was made.

The State joined in it, it is true, but only because it happened to have an interest in the land. If the grant had been the original grant of Manhattan Island for forty guilders, to Peter Minuits, it would have been as well or better. Here was a simple grant of an easement, property of course, but no *franchise*.

2. But, *it so happened*, that the portion of the earth's surface which was the street Broadway *was a public highway*. A railroad could not therefore be operated upon it without a grant from Sovereign New York in her capacity as a sovereign. Such a grant was made and it was a *FRANCHISE, solely and only because it came from the Sovereign*. And it was also *property*. But it might as well have been made to Peter Minuits, or any other human being; and he, having the easement, could have run the railroad and taken tolls, by virtue of the franchise from Sovereign New York; and all of these things could have passed comfortably to his descendants when he died.

3. But, *it so happened*, that the "easement" and the "franchise" were both granted to the Broadway Surface Railroad Company. Being an artificial being, it could not have used either the "easement" or the "franchise" without a grant to do so from Sovereign New York. Such a grant—of power so to do—it had; but although a franchise because, and *only* because, it came from Sovereign New York, it was *not PROPERTY*; and when Sovereign New York afterwards *killed* the Broadway Surface Railroad Company, that power, *though a franchise*, disap-

peared with the life of the company—though the “easement” and the other “franchise” survived and still survive, and might have gone to any human being—as *in fact they did* for about a year.

In other words a railroad corporation, and *any* artificial being can never be as *complete* a being as an human being. The hand and the arm and the leg and the brain of an human are parts of the being, but they are *not* “property.” So are the personal powers of a railroad company.

#### **SECONDLY.**

**That by the filing of its map across Township fifteen and the service of its notices it has acquired a lien upon the strip of land described in the map which cannot be taken from it at all, and certainly not without compensation.**

## I.

**The acceptance by the forest preserve board of the offer of McEchron and others, followed by the entry of the State upon the lands, the survey, and the beginning and continuing of the building of the dam, which was to cost a sum so considerable as sixty-seven thousand dollars, before the filing of the map by the railway company, gave to the people of the State an equitable title, good against all later liens.**

Dodge *vs.* Gallatin, 130 N. Y., 117, 124-129.

The lands in question were then, and except for the entry by the State, are still "wild," "forest" lands—no portion being under cultivation (R. 17, 69), and the proof by the defendant is that it served its location notices, not upon the *occupants*, as the railroad act requires it to do, but upon the *owners* (R. 17, in evidence R. 72), which is, of course, evidence that there were *no* occupants.

The brief used below by the defendant contained this: (p. 4.) "there being no 'actual occupants' of said lands within the meaning of the statute (fol. 84-85, " 409-410, 389-390.)"

The sort of possession required to make such a contract valid being only the sort of possession usual to that kind of land (*Freeman v. Freeman*, 43 N. Y., 34; *Miller v. Ball*, 64 N. Y., 286; *People v. Turner*, 145 N. Y., 451, 461; the kind of entry made by the State was sufficient.

In *Lowry v. Tew*, 3 Barb. Ch. 407; Chancellor Walworth said: (p. 413.) "Taking possession under a parol " agreement, and in compliance with the provisions of " such agreement, accompanied with other acts which " cannot be recalled so as to place the party taking pos-

"session in the same situation that he was in before, has always been held to take such agreement out of the operation of the statute of frauds."

In this case the State made a *survey* for the dam—the state engineer made his *plans* for the dam—and the *construction* of the dam was begun. The State would not only have lost its money, but the acts themselves could not "be recalled"—and it could not have got its stored water for the Champlain Canal and the navigation of the Hudson if the contract were not enforced.

Potter's Willard's Eq. Jur. 286.

Every one who was concerned in the survey or the work on the dam, down to the meanest, would be liable as a trespasser and could defend only upon a specific performance of the contract, and as Mr. Justice Story said in his work on Equity Jurisprudence (§ 761)—"A man who has 'parted with his money is not in the situation of a man 'against whom an action may be brought, and who may 'otherwise suffer an irreparable injury.' (See also § 763.)

None of the opinions of the courts below pass upon this matter, although it is spoken of (R. 97), but as all facts are found in our favor (R. 97), it is sufficient to sustain the judgment, and the result is that, assuming the right to "alter," "repeal," "annul," and "dissolve," already referred to to exist, *there is no Federal question in the case.*

## II.

**The plaintiff in error has not any "lien" upon that portion of the earth's surface which is Township fifteen.**

The appellate division of the Supreme Court of New York reversed the judgment of the Special Term of that court upon

the ground that by the filing of its maps and nothing having been done for fifteen days the plaintiff in error has got a lien upon the land. It did this upon the authority of the following cases—R. H. & L. R.R. Co. v. N. Y. L. E. & W. R.R. Co., 44 Hun, 206, 210, 110 N. Y., 128; Suburban Rapid Transit Co. v. Mayor, etc., of N. Y., 128 N. Y., 510; Pocantico Water Works v. Bird, 130 N. Y., 249, 256 (fols. 458-462).

These cases are as follows:

R. H. & L. R.R. Co. v. N. Y., L. E. & W. R.R. Co., 110 N. Y. 128 was this—

The plaintiff filed its map of a route alongside of and parallel to the line of defendant's road and over the lands of one Babcock. Babcock attempted to change the line, but his proceeding failed because he did not get his papers served in time. The defendant then leased a piece of Babcock's land *across* the plaintiff's located line, and laid down a track to a brick yard, which the plaintiff took up, and laid down *its* track, which the defendant took up.

The plaintiff thereupon brought two proceedings: 1. A condemnation proceeding against Babcock and the Erie Co., to take the land, in which the petition was made 28th August, 1886, and answered 10th September, 1886 (Appeal Book, fols. 26, 43, vol. 1160, Ct. Appeals Cases, 1886, State Library), and an action against them for an injunction in which the complaint was verified and a temporary injunction issued 21st August, 1886 (Appeal Book, fol. 45, same vol.). Both proceedings came before the same Special Term (Appeal Book, same volume, 1st case, fol. 79; 2d case, fol. 250), before the same General Term (Appeal Book, 1st case, fol. 918; 2d case, 276) and in the Court of Appeals they were argued and decided on the same day (110 N. Y. 119, 128).

In the condemnation proceeding the plaintiff succeeded all through. In the action its injunction was dissolved by

the Special Term; upon its appeal the order was reversed as to the Erie Co., *but affirmed as to Babcock*, the court saying (44 Hun, 214): "As to the defendant Babcock, the injunction was properly dissolved, *as he was owner in fee of the land, and until the plaintiff acquired the right by purchase or otherwise to construct its railroad upon his land, he rightfully remained in possession of the same, and could use and occupy or sell or lease the same without any restraint arising from the location of the road over the premises.*

"The case of the *Corporation of New York v. Mapes* (6 Johns., ch. 46), cited in the opinion of the learned Judge who presided at the Special Term, is in point in sustaining the dissolution of the injunction as to Babcock, but is not, as we can see, an authority vindicating the action of the defendant corporation."

From this order the Erie Co. appealed to the Court of Appeals of New York, where it was affirmed (110 N. Y. 128). The plaintiff did not appeal from the Babcock part of the order.

It is plain that here nothing was decided other than as to which of two railroads should hold a located line, and as far as the general term was concerned, it is an express decision in our favor. A conclusive test of the scope of this decision will be made by supposing Babcock's land to have been the land of the State and within the Adirondack park. The decision of the court upon the injunction would have been the same; but the plaintiff would have failed in the condemnation proceeding.

*Suburban Rapid Transit Company v. New York*, 128 N. Y., 510, was this:

The plaintiff was made under the rapid transit act of 1875 to make and run a railroad over the piece of land in question in the case. Having made some progress in the construction of its railroad and got much land, but not

this, chapter 522 of the laws of 1884 was enacted, authorizing the city of New York to take the piece of land for St. Mary's Park. Before the city did anything the plaintiff took, by the exercise of the right of eminent domain, the piece of land from the owners of it and went into possession, Appeal Book, fol. 52, vol. 1475, Ct. Appeals Cases, State Library). Some three years afterward (Appeal Book, fols. 51, 57,) the city tried to take the piece of land from the plaintiff, and the court held that it was already in public use, and could not be taken *under that act*.

The *Pocantico* case I claim as an authority in my favor and it will be considered further on.

I.—*The "lien" in question is personal to the defendant—that is to say, the defendant only can enforce the "lien."*

*Sovereign New York can kill or maim the defendant—maim it by taking away the power to enforce this particular "lien."*

*Suppose she does so:—WHAT BECOMES OF THIS "LIEN"?*

It is settled, we will say, that Sovereign New York cannot touch the *property* of any being—human or artificial. But as to the *persons* of those beings there is a difference. While Sovereign New York cannot "without due process of law" kill an human being and cannot *maim* an human being at all, she can, at her own will, *kill* or *maim*, as it does *please* her, the artificial beings *of her own creation*.

*People v. O'Brien*, 111 N. Y. 1, 48.

To illustrate: When the Broadway Surface Railroad Company's articles were filed, it had in its treasury three hundred dollars. Sovereign New York could, as she afterwards did, *kill* the Broadway Surface Railroad Com-

pany, but she could not touch any part of those three hundred dollars.

*People v. O'Brien*, 111 N. Y. 1.

Assuming a franchise to be a branch of the prerogative subsisting in the hands of a subject, or in other words something which the sovereign alone can grant and which it has actually granted, it does not follow that it is *property*. A corporation cannot operate a railroad, even though it owns one, unless the *power* to do so has been conferred upon it by its sovereign—and that *power* is a franchise, but it is a franchise personal to the corporation—a part of its being, like the hand and the brain of an individual human being, and like all the other powers which go to make up the being of a corporation, it will die with the corporation's death, as the hand and the brain of an human being die with that human being's death.

The "lien" can be enforced by no one but the defendant. It is thus *personal* to the defendant only.

*St. Peter v. Denison*, 58 N. Y., 416, 421.

*Birdsall v. Cary*, 66 How. Pr., 358.

It cannot be sold, given away or parted with in any manner.

If either of those dispositions were made of it it would cease to be,—as would the intellect of an human being if enough of his brain were taken to derange him though not enough to kill him,—as the hand of an human being would cease to be a hand, if it were cut from his body.

It is *not* property.

And it follows that it is not a LIEN.

II.—*The exercise of the right of eminent domain consists in the taking of property, not in tying it up for a thousand years, so that while you do not take it yourself, no one else can take it during the thousand years, upon*

*the chance that not the sovereign, but a railroad company, may make up its mind to take it during the nine hundred and ninety-nine years.*

To illustrate by this case:

The life of the defendant is *one thousand years* from the seventh of July, 1882 (R. 71-72), and its life for the whole of that immense period is made perfectly safe, for the railroad commissioners, on the ninth of May, 1892, *relieved it*, under section 83 of the railroad law *from the obligation of constructing any more of its railroad than is now constructed* (R. 19, in evidence 72).

The owners of Township fifteen are thus placed in this beautiful predicament. The railroad company can discontinue its present condemnation proceedings;

*Forster v. Scott*, 136 N. Y., 577, 582.

*Matter of Washington Park*, 56 N. Y., 144, 154.

*Matter of Syracuse, B. & N. Y. R.R.*, 4 Hun, 311.

and the "lien" will then continue for *nine hundred and eighty-three years—twenty-nine generations*.

It is safe to say that nothing like this was ever before claimed for the right of eminent domain. Heretofore when the sovereign has taken property for the public use it has simply "*taken*" it.

*The power, not to take it, but to say that nobody else, not even its owner, shall take it or use it, does not exist.*

Of course, it can be destroyed, if necessary, as you would destroy a rattlesnake, but that is another matter. There is no question here of its being an injury.

In the days when the sovereign was an human being the exercise of the right of eminent domain was very simple. Her Majesty, the Good Queen Bess *took* what Her MAJESTY wanted; and that Her Majesty did not always *pay* for it, is shown by the provision in the Constitution of New York, that private property shall not be taken for public use

without just compensation (*Beekman v. Saratoga and Schenectady Railroad Co.*, 3 Paige, 45, 57).

When New York built the Grand Canal, her canal commissioners just went and *took* the land and whatever else they wanted for it. *Rogers vs. Bradshaw*, 20 J. R. 735, 738, and unless the "person interested in premises so appropriated" put in a claim to the canal appraisers within a year he was deemed to have *given* his land to the state (1 R. S. Pt. 1, Ch. 9, Tit. 9 §§ 16, 45, 46, 47, 48 and 49; pp. 220, 225-6, *ante*, pp. 102-105), and so stood the law until 1866, and it is substantially so to this day, the former powers to the canal commissioners being now given to the superintendent of public works, and the claims going to the court of claims instead of the canal appraisers (Canal Law; Chap. 338 of 1894; §§ 70, 73, 37.)

See the cases collected in *Birdsall v. Cary*, 66 How. Pr., 358.

The forest preserve act (Chap. 220, Laws 1897, *ante*, p. 31) is, in these respects, a substantial copy of the canal law.

Beginning with the Mohawk and Hudson Rail Road Company, (Chap. 253, Laws 1826, *ante*, p. 127; *Beekman v. Saratoga and Schenectady Railroad Company*, 3 Paige, 45), Sovereign New York, since followed by the rest of the world, has been, somewhat grudgingly and with many safeguards, *licensing* railroad and other corporations to use small details of her sovereign right of eminent domain—and one of the safeguards which she has imposed upon the use of that right, is now claimed to be a *taking* of something.

We submit that the right of eminent domain is exercised only by the *taking* of the *property*.

*Pumpelly v. Green Bay Company*, 13 Wall., 166, 177-181.

The supposition above made is not overstated except by calling 983 years 1000 years.

Section 83 of the Railroad Law (Chapter 565, Laws 1890; Chapter XXXIX of the General Laws, p. 1107) is as follows (printed *ante*, p. 29):

" § 83. LIABILITIES OF REORGANIZED RAILROAD CORPORATIONS.—A railroad corporation, reorganized under the provisions of law, relating to the formation of new or reorganized corporations upon the sale of their property or franchise, shall not be compelled or required to extend its road beyond the portion thereof constructed, at the time the new or reorganized corporation acquired title to such railroad property and franchise, provided the board of railroad commissioners of the state shall certify that in their opinion the public interests under all the circumstances do not require such extension. If such board shall so certify and shall file in their office such certificate, *which certificate shall be irreversible by such board*, such corporation shall not be deemed to have incurred any obligation so to extend its road and such certificate *shall be a bar to any proceedings to compel it to make such extension, or to annul its existence for failure so to do, and SHALL BE FINAL AND CONCLUSIVE IN ALL COURTS AND PROCEEDINGS WHATEVER.* This section shall not authorize the ABANDONMENT of any portion of a railroad, which has been constructed or operated or apply to Kings County."

On the ninth of May, 1892, "the Board of Railroad Commissioners," *upon the application of the defendant,* "issued its certificate certifying that in its opinion the public interests, under all the circumstances, did not require the extension of the road of the Adirondack Railway Company beyond the portion thereof constructed at the time the said company acquired title to said railroad property and franchises, namely, beyond North Creek, in the county of Warren." (fol. 102; in evidence, fol. 431.)

It is difficult to see why this is not an entire *abandonment* of the franchise beyond North Creek.

### *III.—The license to exercise the right of eminent domain cannot be given except by plain, unmistakable words.*

The effect of our structure of government is to lodge the power of giving license to exercise the right of eminent domain in the legislature, exclusively.

*Matter of Poughkeepsie Bridge Company,*  
108 N. Y., 483.

*In re N. Y. & H. R.R. Co. v. Kip*, 46 N. Y., 546, the court, speaking by Judge Allen, said: (p. 552.)

"They" (such statutes) "are to receive a reasonably strict and guarded construction, and the powers granted will extend no further than *expressly stated*, or than is necessary to accomplish the general scope and purpose of the grant. *If there remains a doubt as to the extent of the power, after all reasonable intenders in its favor, the doubt should be solved adversely to the claim of power.*"

And substantially the same is said in *Matter of Boston and Albany R.R. Co.*, 53 N. Y., 574, 577.

In *Matter of Poughkeepsie Bridge Company*, 108 N. Y., 483, the court, speaking by Judge Andrews, said: (p. 490.)

"In construing statutes which are claimed to authorize the exercise of the power of eminent domain, a strict, rather than a liberal, construction is the rule. Such statutes assume to call into active operation a power which, however essential to the existence of the government, is in derogation of the ordinary rights of private ownership and of the control which an owner usually has of his property. The rule of strict construction of condemnation statutes is especially applicable to delegations of the power by the legislature to private corporations. The motive of the promoters of such corporations is usually private gain, although their creation may subserve a public purpose. When such corporations claim to exercise this delegated power, the rule of strict construction accords with the ordinary rule that delegations of public powers to individuals or private corporations are to be strictly construed in behalf of the public, and by the other principle that private rights are not to be divested except by the clear warrant of law.

But there are not any words in the railroad law to indicate that a railroad company can take the sort of lien in question upon the land of the private owner by the right of eminent domain, or that the filing of the maps, and the expiration of the fifteen days gives it such a lien.

On the contrary there is plenty that it does not.

"§ 4" of the Railroad Law says that the corporation "shall have power," (sub. 2.) "to acquire *by condemnation* such real estate and property as may be necessary "for such construction, maintenance and accommodation "in the manner provided by law, but the real property

"acquired by condemnation shall be held and used only  
 "for purposes of the corporation during the continuance  
 "of the corporate existence."

Section 3359 of the Code of Civil Procedure is as follows:

"§ 3359. Whenever any person is authorized to acquire title to real property, for a public use, *by condemnation*, the proceeding for that purpose SHALL be taken "in the manner prescribed in this title."

Section 3360 begins as follows:

"§ 3360. The proceeding SHALL be instituted *by the presentation of a petition* by the plaintiff to the Supreme Court setting forth the following fact:"

Section 3371 reads as follows:

"If the report" (of the commissioners) "is confirmed, the court shall enter a *final order* in the proceedings, directing that compensation shall be made to the owners "of the property, pursuant to the determination of the "commissioners, and that *upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment.*"

Here is express legislation that "real property" can be taken, by the right of eminent domain, *only* by the proceedings above described.

Nor does the location section say anything to the contrary. It provides;

"§ 6. LOCATION OF ROUTE.—Every railroad corporation except a street surface railroad corporation and "an elevated railway corporation, *before constructing any part of its road* in any county named in its certificate of "incorporation, or instituting any proceedings for the "condemnation of real property therein, shall make a map "and profile of the route adopted by it in such county,

"certified by the president and engineer of the corporation, or a majority of the directors, and file it in office of the clerk of the county in which the road is to be made. The corporation shall give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not been purchased by or given to it, of the time and place such map and profile were filed, and that such route passes over the lands of such occupant. Any such occupant or the owner of the land aggrieved by the proposed location, may, within fifteen days after receiving such notice, give ten days' written notice to such corporation," etc., of an application "for the appointment of commissioners to examine the route." The commissioners may "affirm the route originally designated or adopt the proposed alteration thereof." An appeal may be taken, and on the appeal, the court may affirm the route proposed by the corporation, or may adopt that proposed by the petitioner." *No such corporation shall institute any proceedings for the condemnation of the real property in any county until after the expiration of fifteen days from the service by it of the notice required by this section.*" All this is plainly for the protection of the individual land owner and the public, and not with a view of giving away private property without notice and without compensation.

*Ingersoll v. Nassau Electric R.R. Co.*, 157 N.Y., 543, 563.

(All these laws are printed, *ante*, pp. 23-31).

IV.—*If section six of the railroad law (ante p. 25), by the filing of the map and the expiration of fifteen days makes a lien upon the land, then it is unconstitutional and void, because it takes private property WITHOUT NOTICE, i. e., without due process of law.*

*Kentucky Railroad Tax cases*, 115 U. S., 331.

V.—*If section six of the railroad law (ante p. 25), by the filing of the map and the expiration of fifteen days makes a lien upon the land, then it is unconstitutional and void, because it takes private property WITHOUT COMPENSATION.*

As has been above shown this lien is to continue for nine hundred and eighty-three years. The owner cannot sell the land free from the lien. He cannot build a house upon it and live there with any comfort. *He cannot even pay the lien off.* There is no possible way, short of an act of the legislature, by which it can be got rid of.

Of course if it exist at all it is *property*, *Forster v. Scott*, 136 N. Y., 577; *Ingersoll v. Nassau Electric R.R. Co.*, 157 N. Y., 453, 463, and *property which has been taken from the owner of the land*.

*Now, where is the statute which gives him compensation for that taking of property?*

*There is none.*

It is small consolation to him, that *nine hundred and eighty-three years* from now his then descendant, *twenty-ninth in the line of descents from him*, may either get paid for the land by its being taken or get rid of the lien by the end of the defendant's life.

*This, of course, comes under the fourteenth amendment.*

VI.—*The fifteen days not having expired when the State, but for the injunction, would have acquired the title to Township fifteen and when the deed was actually put in escrow, the route of the defendant has not become located nor has any lien been acquired by it, as against the State.*

1. The defendant filed its map on the *eighteenth of September* (R. 6; admitted R. 32).

On the *first of October—twelve days*—the State was

about to get its deed and pay the money, (Mr. Hibbard's deposition, R. 14; in evidence, R. 72; resolution forest preserve board, R. 5) when the delivery of the deed was stopped by the injunction got by the defendant (R. 8, 60). On the *second* of October—*thirteen* days—the deed was actually put in escrow, (R. 53, 322-324,) and after the injunction was vacated it was delivered (R. 53).

It has since been finally and conclusively adjudged that that injunction should not have been made (R. 61; opinion Appellate Division at end of this brief).

*The State is therefore in the same position as if it had got its deed on the first of October—TWELVE days after the filing of the map.*

*Riggs v. Palmer*, 115 N. Y. 506.

The Statute did not mean this (p. 510), and "No one shall be permitted to \*\*\* take advantage of his own wrong" (p' 511).

*People e. r. Manhattan R. Co. v. Barker*,

152 N. Y. 417, 474;

*Ansonia B. & C. Co. v. Conner*, 103 N.

Y. 502;

*Shellington v. Howland*, 53 N. Y. 371, 375;

*Kingsley v. City of Brooklyn*, 78 N. Y. 200,  
216;

*Hunting v. Blun*, 143 N. Y. 511, 514;

*United Glass Co. v. Vary*, 152 N. Y. 121,  
127.

2. It was perfectly well settled under Section 22 of the General Railroad Act (Chap. 140, Laws 1850,) that the filing of the map only *proposed* the location, and that the location was made only by the expiration of the fifteen days or the final determination of the commissioners or the court—and until then the railroad company could not begin proceedings to take land by the right of eminent domain.

In *R. H. & L. R.R. Co. v. N. Y. etc., R.R. Co.*, 110 N. Y. 128, the court, speaking by Judge Gray, said (p. 133) :

" When, therefore, a corporation has made and filed a map and survey of the line of route it intends to adopt for the construction of its road, *and has given the required notice to all persons affected by such construction, and no change of route is made, as the result of any proceedings instituted by any landowner or occupant*, in our judgment, it has acquired the right to construct and operate a railroad upon such line; exclusive in that respect as to all other railroad corporations, and free from the interference of any party.

Also— Matter *L. I. R.R. Co.*, 45 N. Y. 364, 365.

*People ex r. E. & G. V. R.R. Co.*, 49 N. Y. 356, 359;

Matter of *Washington Park*, 56 N. Y. 144, 154.

*Wallkill Valley R.R. Co. v. Norton*, 12 Abb. Pr. N. S. 317.

*N. Y. & Boston R. R. Co. v. Godwin*, 12 Abb. Pr. N. S. 21, 21; 62 Barb. 85.

Matter of *Niagara Falls R.R. Co.*, 46 Hun, 94.

In the *Pocantico* case (130 N. Y. 249,) the Court, speaking by Mr. Justice Haight, said, (p. 256,) in regard to this statute:

" But in the case of a railroad, the statute provides for the location of its route through the counties which it has to pass, and such location is made known by the map and survey which it places on file. The statute, then, within a specified time, gives to the persons interested the right to institute proceedings to change the location. *If this is not done the road becomes LOCATED at the place indicated upon the map filed, and the com-*

"pany is *thus* given the exclusive right to construct and "operate its road upon such line."

The language of section 22 has been changed somewhat, by its enactment into section 6 of the Railroad Law, but we submit that it does not make any difference.

The changes are thus: the word "intended" is left out from before the word "adopted" in the first sentence. So that whereas section 22 read—"map and pro-  
"file of the route *intended to be adopted* by such com-  
"pany in such county," section 6 now reads—"map and  
"profile of the route *adopted* by it in such county."

But, then, the section, as it stands, calls the line filed by the company the "*proposed* location" all the way through. So that section 6 now reads—"Any such occu-  
"pant, or the owner of the land aggrieved by the  
"*proposed* location, may, within fifteen days, apply,"  
etc.

The justice may appoint commissioners "to examine  
"the route *proposed* by the corporation."

On appeal from the commissioners the court "may  
"affirm the route *proposed* by the corporation or may  
"adopt that *proposed* by the petitioner."

And it has put in at the end this:—"No such corpora-  
"shall institute any proceedings for the condemnation of  
"real property in any county until after the expiration of  
"fifteen days from the service by it of the notice required  
"by this section;"—which was not in section 22, although  
the courts held, as already stated, that such was the effect  
of that section.

The exact text of this part of Section 6 is as follows:

"§ 6 LOCATION OF ROUTE.—Every railroad corporation  
"except a street surface railroad corporation and an ele-  
"vated railway corporation, before constructing any part  
"its road in any county named in its certificate of incor-  
"poration, or instituting any proceedings for the con-

"demnification of real property therein, shall make a map  
 "and profile of the route adopted by it in such county, certi-  
 "fied by the president and engineer of the corporation, or  
 "a majority of the directors, and file it in the office of the  
 "clerk of the county in which the road is to be made.  
 "The corporation shall give written notice to all actual  
 "occupants of the lands over which the route of the road  
 "is so designated, and which has not been purchased by  
 "or given to it, of the time and place such map and pro-  
 "file were filed, and that such route passes over the lands  
 "of such occupant. Any such occupant or the owner of  
 "the land aggrieved by the *proposed* location, may,  
 "within fifteen days after receiving such notice, give ten  
 "days' written notice to such corporation and to the  
 "owners," etc., of an application to a justice of the  
 supreme court, for the appointment of commissioners.

"The justice may, upon the hearing of the application,  
 "appoint three disinterested persons, one of whom must  
 "be a practical civil engineer, commissioners to examine  
 "the route *proposed* by the corporation, and the route to  
 "which it is proposed to alter the same," etc.

An appeal may be taken, and upon it "the court may  
 "affirm the route *proposed* by the corporation or may  
 "adopt that *proposed* by the petitioner."

*Italics mine.*—The full text of section 6 is given *ante* p. 25.

In the Pocantico case (*Pocantico W. W. Co. v. Bird*, 130 N. Y., 249) the plaintiff, a water works company, had bought lands upon the river with grants of the right to divert its waters from six persons—defendant, another water works company, filed a map for a dam *above* those premises, so that in order to divert the waters at its proposed dam—it would have had to take the waters thus granted. Plaintiff had not filed any map—the statute in regard to the filing of the map was in these words:—

Section 29, Chap. 415, Laws 1876, is as follows:

"Before entering upon, taking or using any land for the

"purposes of the above recited act, the said company  
 "shall cause a survey and map to be made of the lands  
 "intended to be taken or entered upon for any of the  
 "purposes of the said act, by and on which the land of  
 "each owner or occupant shall be designated, which map  
 "shall be signed by the president of the said company, and  
 "its secretary, and be filed in the office of the county clerk  
 "of the county in which the said lands are situated; and  
 "the said company by any of their officers, agents and  
 "servants, may enter upon any lands for the purpose of  
 "making such survey or map."

Here is a plain distinct holding that the filing of the map, *without the expiration of the fifteen days*, will *not* give a lien.

Also, *N. Y. C. v. Aldridge*, 133 N. Y., 83, and  
*Archibald v. N. Y. C.*, 157 N. Y., 574.

The location section plainly means that the *owner* shall have *fifteen FULL days*. The time the injunction was in force must, therefore, be taken out (Cases, *ante*, p. 155).

The State, thus, in effect, had the title to the land three days before the defendant COULD have got its lien.

### III.

**The forest preserve has been made by the State with the deliberate intention of excluding corporations and particularly railroad corporations from it.**

It is settled that park and railroad uses are *inconsistent* public uses.

*Matter of Boston and Albany Railroad Company*, 53 N. Y. 574, 577.

*Suburban R. T. Co. v. Mayor*, 128 N. Y. 510, 521.

To ascertain what was the intention in this case, a chronological statement may help.

1863. Adirondack Company incorporated—to build a railroad from Saratoga to a place in the town of Newcombe, Essex County (R. 71).

1871. It amended its articles so as to make its line to be from Saratoga to a point in the town of Oswegatchie, St. Lawrence County, through counties of Warren, Essex and Hamilton (R. 71).

Under this it built its road to North Creek (R. 19), *and there it stops to this day.*

1882. Its property was sold out under the foreclosure of a mortgage and the purchasers, under the reorganization acts, organized the defendant *with a life of one thousand years* (R. 71).

1885. *The forest preserve* was created by Chapter 283 of the Laws of 1885 (p. 482), consisting of "All the lands now owned or which may be hereafter acquired by the state of New York, within the counties of" Essex, Warren and Hamilton, and other counties—and "§ 8" was this "The lands now or *hereafter constituting the forest preserve shall be FOREVER kept as wild forest lands. They shall not be sold, nor shall they be leased or taken by ANY person or corporation public or private.*" (*Ante*, pp. 41-45.)

The forest commission, with all its machinery, was created and by section 32 a small appropriation—\$15,000—was made.

1887. By chap. 639 (p. 849) the description of the "Forest Preserve" was changed by adding certain other lands. (*Ante*, pp. 51-52.)

1890. The forest commission, with the approval and concurrence of the commissioners of the land office, was authorized to "purchase lands so located

"within such counties as include the forest pre-  
"serve, as shall be available for purposes of a  
"state park," and twenty-five thousand dollars  
was appropriated for that purpose. (Chap. 37,  
p. 42.)

1892. *In April the defendant applied to the railroad commissioners for, and on the 9th of May obtained, a certificate that in the opinion of the Board of Railroad Commissioners "the public interest, under all the circumstances, did not require the extension of the road of the Adirondack Railway Company beyond the portion thereof constructed at the time the said company acquired title to said railroad property and franchises, namely, beyond North Creek, in the County of Warren"* (R. 19; in evidence, R. 72).

The defendant's testimony (R. 19) is that this certificate is given under Section 83 of the Railroad Law, which declares such a certificate to "be irreversible by such board," and it is elsewhere called in the same section an "abandonment."

The text of the section is given *ante*, p. 29.

It is difficult to see why this did not permanently terminate the line at North Creek. *At any rate it made the life of the company good for nine hundred and ninety years.*

May 20. The legislature enacted Chapter 707 (p. 1459) of the laws of that year. Section 1 established the Adirondack park, and declared that it should be "forever reserved, maintained and cared for as ground open for the free use of all the people for their health and pleasure and as forest lands, necessary to the preserva-

"tion of the headwaters of the chief rivers in the state, and a future timber supply," and it gave the forest commission power to contract for the purchase of land subject to *no other* restriction than the right to the vendors to do certain things *within ten years.* (*Ante*, pp. 53-59.)

1893. Chapter 332 (Articles six and seven of chapter forty-three of the general laws, p. 633,) reenacted the above language as to the Adirondack park—adding the words (§ 120, p. 643,) "and shall remain part of the forest preserve." and also enacted:

**“§ 121. POWERS AND DUTIES OF FOREST COMMISSION. \* \* \* The forest commission shall have power:**

"1. To contract as herein provided for the purchase of land situated within the bounds of the park as defined in the preceding section: if any such lands cannot be purchased on advantageous terms unless subject to leases or restrictions or the right to remove soft wood timber, the tract may provide accordingly, but not for any such right, lease or restriction after ten years from the date of the contract, nor the right to remove any such trees with a diameter of less than twelve inches at the height of three feet from the ground. (*Ante*, pp. 60-79.)

1894. The legislature made two appropriations for the purchase of lands and provided for the convention to "revise and amend the constitution."

1895. On the first of January came into effect the Constitution, which had been ratified sixth November, 1894, and of which the section seven of Article seven is as follows:

*"The lands of the State now owned or hereafter acquired, constituting the forest preserve, as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by ANY corporation, public or private, nor shall the timber thereon be sold, removed or destroyed."*

On the twenty-fifth of April came another long act about the forest preserve and the Adirondack park, giving the same definitions over again (*ante*, p. 79, and especially giving to the fisheries, game and forest commission control over and the exclusive power to "lay out paths and roads in park" (*ante*, p. 93), and another act authorizing the purchase of eighty thousand acres of land for the Adirondack park (chap. 395, p. 237; chap. 561, p. 368, *ante*, p. 95); under which there was expended five hundred and eighty-five thousand dollars (1 Laws 1896, p. 1066). And in 1897 came the forest preserve act (*ante*, pp. 31-40), with its *command* to the forest preserve board. "§ 2. It shall be the *duty* of the forest preserve board and it is hereby authorized to acquire for the State by purchase or otherwise land, structures or waters or such portion thereof in the territory embraced in the Adirondack park, as defined and limited by the fisheries, game and forest law,

Laws above quoted defining the "forest preserve" referred to in the constitution (admitted by the answer R. 5, 31).

"as it may deem advisable for the interests of the State" (*ante*, p. 31), and its appropriation of a million of dollars.

It is plain that under the words "any land, structures and waters in the territory embraced in the Adirondack

" park " (*ante*, p. 31, § 2) the State can take anything—a completed railroad—and it is equally plain that the Constitution expressly *excludes* the defendant. ——" shall be " forever be kept as wild forest lands. They shall not be " \* \* \* \* taken by ANY corporation, public or private, " nor shall the timber thereon be sold, removed or de- " stroyed."

AND, *it is also plain*, that under the CONSTITUTION, as it stands, the town authorities *cannot make an highway* through the forest preserve—the whole matter of roads *of ANY kind* being left to the forest commission (Chap. 395, Laws 1895, § 292, Sec. 291, p. 254, *ante*, p. 93).

*How then about a railroad?*

#### IV.

### **The defendant is forbidden by the Constitution from taking from the State the lands in question.**

In deciding this case at the Special Term, Mr. Justice Chester said (R. 42):

" Under the condemnation proceedings taken by the railway company, the title to the lands sought to be taken does not pass upon the procuring of a judgment of condemnation, nor does it pass until the amount of compensation has been determined and actually paid to the owners. \* \* \*

" The compensation not having been determined and paid, the title or right of the railway company, if any, is the same now as when the Appellate Division vacated the injunction.

" In the meantime the State has procured the legal title

" by the delivery of the deeds herein mentioned. \* \* \*

" That act (Forest Preserve Act), however, provides not  
" only for a method of appropriation by the State, but  
" authorises the Forest Preserve Board to acquire land for  
" the State by purchase or otherwise (§ 2). \* \* \*

" The State having acquired the lands, they are now  
" part of the Forest Preserve, and are brought within the  
" protection of section seven of Article seven of the Con-  
" stitution, which provides that; 'The lands of the State,  
" now owned or hereafter acquired, constituting the  
" Forest Preserve, shall be forever kept as wild forest  
" lands. They shall not be leased, sold or exchanged or  
" be taken by any corporation, public or private, nor  
" shall the timber thereon be sold, removed or destroyed.'

" These lands are not therefore subject to be taken by  
" this railway company,"—

Here, we submit, is the whole case. If the defendant has got a lien, *let it keep it; for the whole of its nine hundred and eighty-three years of life, if it so choose, and let it foreclose its lien, or enforce it, IF IT CAN.*

*That is NOT what it is now trying to do. It is trying to "take" the LAND, by its license from SOVEREIGN NEW YORK—to use the sovereign's right of eminent domain.*

*It has not yet got the land, and the CONSTITUTION says that it cannot TAKE it.*

We are dealing with the very rare case of Sovereign New York exercising the right of eminent domain *herself*. Since the days of the Grand Canal, we know of no instance where she has done so, except in the comparatively small matters of the New Capitol and the Niagara reservation. We are so accustomed to the use of the small details of that right, by private corporations, by the license and at the sufferance only of the Sovereign, and the enormous mass of case law which has grown up about those details

of that use, that the act of Sovereign New York herself, does not strike the mind with its full and simple force.

It was said upon the argument in *Beeckman v. Saratoga and Schenectady Railroad Company*, 3 Paige, 45, 60,—the first case where the license to a railroad company to use the right of eminent domain was sustained,—that the legislature of New York had then (1831) incorporated about fifteen hundred turnpike, bridge and canal companies, with the license to take private property.

We are dealing also with a case—the only one we know of—where Sovereign New York is acting *herself*—by the Constitution—the *Supreme* law. This is not a case where we have to show express authority from the legislature (108 N. Y., 483).

#### It is the CONSTITUTION.

In delivering the opinion of the Court of Errors in the great case,—*Rogers v. Bradshaw*, 20 J. R., 735,—which affirmed the constitutionality of the canal acts, Chancellor Kent said (p. 740):

“ Surely, a statute, vesting large powers, resting very much for their exercise in undefined discretion, and checked only by the gentle admonition of doing ‘ no unnecessary damage,’ ought to be construed more benignly and more liberally. Especially ought this to be the case, when the powers are to be applied to a great public object, calculated to intimidate by its novelty, its expense, and its magnitude, and which depended for its successful results, upon decision of character, as well as upon maturity of judgment.”

#### V.

**If, by the filing of its map, the defendant has got a lien, the State, by its appropriation proceeding, has taken that lien.**

1. *The act under which the appropriation was made provides for service upon and compensation to the owner*

*only, and vests the whole title in the State free of all liens, and is, notwithstanding, constitutional.*

*Watson v. New York Central Railroad Company, 47 N. Y., 157:*

In that case land had been taken by the Attica and Buffalo Railroad Company, whose charter had in it words which are to be quoted directly.

Upon that land was the LIEN of a judgment for money: that is to say, one Hatch had recovered against Elijah A. Bigelow a judgment for money. Bigelow, the judgment being unpaid, made an assignment to a receiver appointed in a creditor's action brought by another creditor than Hatch, and then went into bankruptcy, and an assignee in bankruptcy was appointed.

Matters being in this shape the railroad company started to take Bigelow's land and it made parties to its proceeding the receiver and the assignee, but neither Bigelow, nor *Hatch*.

After it had got possession of the land, the proceedings having been ended, Hatch sold the land under his judgment and the plaintiff—Watson—claimed under that title.

The court of appeals of New York, speaking by Judge Rapallo, said: (47 N. Y., p. 161). "The court below held "that the act under which the proceedings for condemnation "of the land were instituted, did not require that "judgment creditors be made parties thereto. (Laws "of 1834, p. 228; 1836, p. 323; 1843, p. 226.) That "under those acts proceedings were to be taken only "against the *owners* of the land, and that compen- "sation was to be made only to such *owners*. That a "judgment creditor having a mere statutory lien, was in "no sense an owner, and that the title of the railroad "company, when acquired under the acts became para- "mount to such lien.

"The provisions of the acts in question are fully referred to in the opinion delivered at General Term by "MASTEN, J.,\*" and we concur with the learned judge "that they admit of no other construction than that the "owners were the only necessary or proper parties to "the proceedings.

"The general railroad laws of 1848 and 1850 provide "for making parties all persons interested, as *owner, tenant, lessee, or encumbrancer*. But no such provision "was contained in the act of 1836, chap. 242 under "which the Buffalo and Attica Railroad Company de- "rived its powers, or in the act of 1834, chap. 177, re- "ferred to in the act of 1843, chap. 169. In those acts "the only parties for whom notice or compensation are "provided are the *owners*.

"The terms 'owner or owners,' as used in these stat- "utes, being intended to designate the parties entitled to "the compensation which is substituted for the land "taken, should be held to embrace all persons having "estates in the land, in possession, reversion or remain- "der. (*Parks v. The City of Boston*, 15 Pick., 198.) "All persons having proprietary interests are entitled to "compensation, for the aggregate of those interests con- "stitute the ownership or fee. It has been frequently "held that tenants for years are owners within the mean- "ing of similar statutes. (*Turnpike Road v. Brosi*, 22 "Penn. State R., 29; *Brown v. Powell*, 25 id., 229; *B.* "and *O. R.R. v. Thompson*, 10 Md., 76; *Parks v. City* "of *Boston*, 15 Pick., 198.) Also that a franchise issu- "ing out of the land may be regarded as real estate, "for which the owner is entitled to compensation. (*En- field Bridge Co. v. Hartford and N. H. R.R. Co.*, 17 "Conn. 454).

"But a judgment creditor of an owner has no estate or

\* Sheldon, 159.

" proprietary interest in the land. He stands wholly upon  
" the law which gives him a remedy for the collection of  
" his debt by a sale of the land under execution, in case  
" sufficient personal property of the debtor should not be  
" found. This remedy is not secured by contract, but is  
" purely statutory, and in aid of its acts have been passed,  
" from time to time, authorizing a sale of the land which  
" the debtor owned at the time of the recovery or docket-  
" ing of the judgment, or at any subsequent period, and  
" making the judgment a lien upon the land. The dura-  
" tion of this lien and the mode of its enforcement and  
" discharge are subjects which appertain to the laws for  
" the collection of debts, and the rules upon those subjects  
" have been changed, from time to time, according to the  
" will of the legislature. The power of the legislature to  
" regulate those matters can not be doubted. Acts have  
" been passed shortening and lengthening the duration of  
" the liens of existing judgments, and even providing for  
" their extinguishment without any proceeding to which  
" the judgment creditor was a party. By the act of April  
" 2d, 1813 (1 R. L., 500), it was provided that no judgment  
" theretofore rendered should be a lien for more than ten  
" years from April 9, 1811. By the act of April 3, 1821,  
" the lien of judgments recovered between April 9, 1811,  
" and April 2, 1813, was extended to ten years from the  
" time of docketing; and the lien of judgments on which  
" executions had been issued was further extended three  
" months. By the act of May 14, 1840, the duration of  
" the lien of all then existing judgments was reduced to  
" five years from the time that act took effect. (Laws of  
" 1840, chap. 386, Sec. 32.) By the act in relation to the  
" foreclosure of mortgages (Laws of 1840, chap. 342, Sec. 9),  
" it was provided that judgment creditors need not be made  
" parties to foreclosure suits, and that the lien of their  
" judgments should be cut off by the foreclosure though

" they were not parties. This act applied to existing as well as future judgments. By section 282 of the Code, " the real estate of the debtor may be exempted from the " lien of the judgment by being marked secured on appeal, " and this provision, when originally adopted, applied to " then existing judgments.

" It is clearly within the power of the legislature to " abolish the lien of all judgments at any time before rights " have become vested or estates acquired under them, and, " placing real estate on the same footing as personal property, to confine the remedies of the creditor to the property held by the debtor at the time of issuing the execution.

" This would be no greater exercise of power than the " abolition of the right of distress for rent, or of the lien " of the landlord on property taken in execution, or of the " right of imprisoning the debtor. Yet the validity of " such laws has been fully recognized even where they " affected existing claims or judgments. They do not take " away property, or affect the obligation of contracts, but " simply affect legal remedies. *There can, therefore, be no doubt of the validity of a provision causing the lien of a judgment, not ripened into a title by a sale, to be superseded by the taking of the land under proceedings in exercise of the right of eminent domain, on payment of compensation to the owner of the land.*

" We think that the act of 1836 had that effect. It is claimed on the part of the appellant, that if the judgment creditor is not an owner, the act makes no provision for divesting his interest; and therefore the effect of the order of condemnation is to rest in the company the right to the land, subject to the lien of the judgment, in the same manner as if the company had taken by deed from the owners. But such a construction cannot be admitted.

" The object of the act was to delegate to the company  
" the right of eminent domain, to the extent necessary to  
" enable it effectually to secure its roadway, etc., in case  
" it should fail to obtain it by contract with the owners.  
" It provides for the appraisement, on notice to the owner  
" or owners, of the value of the land taken, and of any  
" further damages which the owners may sustain by the  
" construction of the road, injury to buildings, etc. The  
" whole amount of this appraisement is directed to be  
" paid to the owners. There is no provision for assessing  
" the value of the interest of the owners, subject to the  
" lien of judgments, or for retaining any part of the  
" value of the land as indemnity against such judgments.  
" The whole value must be paid to the owners, or depos-  
" ited in bank, and the owners are left to pay their own  
" debts.

" The act then states what right the company shall  
" obtain by virtue of such payment to the owners, and  
" the order made thereupon. On the completion of the  
" proceedings, the company is declared to be possessed of  
" the land during its corporate existence, with the right  
" to use the same for the purposes of the road.

" This declaration excludes the implication, that, after  
" the owners have been compensated, the right of any  
" other person to interfere with the possession or use of  
" the land is reserved, or that, in order to retain such  
" use, the company is bound to satisfy liens of judgment  
" creditors, after having been compelled to pay the whole  
" value of the land to the owner.

" What recourse the judgment creditor might obtain in  
" equity upon the proceeds paid to, or deposited to the  
" credit of the owners, is a question not involved in this  
" controversy; neither is it necessary to consider how the  
" rights of mortgagees would be affected by the proceed-  
" ing, or what protection they could obtain.

" The matter of the lien of judgments being wholly under the control of the Legislature, they had power to confer upon the company the right of possession and use of the land free from all such liens, on paying the value of the land to the owner; and we think it was manifestly their intention so to do, modifying to that extent the laws giving liens to judgment creditors.

" In the present case, this modification had been made before the judgment relied upon was recovered; but it is not necessary to rest our conclusion upon that ground.

" The act of 1847 (ch. 273, sec. 3) is referred to by the counsel for the appellant, as implying that an outstanding judgment affecting the interest of an owner who had been compensated, was recognized by the Legislature as a defect in the title. But no such inference can properly be drawn from the act of 1847. Its provisions afforded a remedy to the railroad company in cases where land, obtained by conveyance from an owner, was subject to liens under which title had subsequently been perfected, and the title of the company was thus rendered invalid, and also in cases where, in proceedings for condemnation, some owner had been omitted."

THE ACTS CONSTRUED IN THAT CASE CONTAINED THE FOLLOWING:

" Chap. 242.

" *An Act to provide for the construction of a rail-road from Attica to Buffalo.*

" Passed May 3, 1836."

" Real estate. § 7. The corporation is hereby empowered to purchase, receive and hold such real estate as may be necessary for accomplishing the objects for which it is granted; and may, by their agents, surveyors and engineers, enter upon and take possession of and use,

“ all such lands and real estate as may be indispensable  
“ for construction and maintenance of their single or  
“ double rail-road or way, and the erection of buildings  
“ necessary for stationary engines; and may also receive  
“ hold and take, all such voluntary grants and donations  
“ of land and real estate, for the purpose of said road, as  
“ shall be made to the said corporation, to aid in the con-  
“ struction, maintenance and accommodation of the said  
“ road; but all lands or real estate thus entered upon,  
“ which are not donations, shall be previously purchased  
“ by the said corporation of the owner or owners of the  
“ same, at a price to be mutually agreed upon between  
“ them; and in case of any disability on the part of the  
“ *owners* of such, to contract or sell the same, on account  
“ of insanity, infancy or otherwise, refusal to sell, or dis-  
“ agreement as to price, and before making any portion of  
“ such road on said land the said corporation shall present  
“ a petition to the first or senior judge of the county in  
“ which such land may lie, setting forth the necessity of  
“ such land for the making of such road, and the failure  
“ to obtain the same by agreement, with the reasons there-  
“ of, and the name and residence of each OWNER, if known,  
“ together with a map, plan, and profile of the road, and  
“ praying for the appointment of a jury of appraisers.  
“ The said judge shall thereupon direct reasonable notice  
“ in writing, to be given to the OWNERS of such lands of  
“ the time of drawing of such jury, which shall be at the  
“ clerk’s office in the county where the lands are situate,  
“ and upon due proof thereof, and hearing the parties, or  
“ such of them as may attend, and object to the regularity  
“ of the proceedings on the part of the said corporation,  
“ such judge, together with the clerk of said county, shall  
“ draw from the grand jury box of the county the names  
“ of twelve competent and disinterested jurors, who, by  
“ an order to be made by such judge, and entered in the

" common rule book of the court of common pleas, shall  
" be appointed appraisers of the damage to be sustained  
" by such owners in the construction of such road: and  
" should any person or persons so designated refuse or  
" neglect to serve on said jury, or be disqualifed, the  
" vacancy or vacancies shall be filled by said judge in  
" manner aforesaid. Said appraisers shall before entering  
" upon the duties of their office take the oath prescribed  
" by the sixth article of the constitution. The said judge  
" shall appoint a time and place for said appraisers to  
" meet, and shall cause due notice in writing to be served  
" upon such owners, or, in case of absence, to be left at  
" their usual place of residence, if within the  
" county, and if not, to be put up in some  
" conspicuous place on the premises, of the time  
" and place of meeting for the purpose of completing said  
" appraisement, and shall also cause due notice to be  
" given to the said appraisers of the time and place of  
" meeting, and said appraisers shall at such time proceed  
" to view the premises; they shall have power to examine  
" witnesses under oath, which oath any one of the said  
" appraisers is hereby authorised to administer, and shall,  
" without fear, favor or partiality, assess the value of the  
" land taken, and the damages such OWNERS may sus-  
" tain by the taking of their lands, by injury to buildings,  
" and in the construction of such road, without any deduc-  
" tion on account of any real or supposed benefit or advan-  
" tage which such OWNERS of such lands may derive by  
" the construction of such road. They shall make an  
" inquisition or certificate of their appraisement, specify-  
" ing the items appraised, with a map thereof, and shall  
" present the same, with the testimony taken, to the  
" county clerk, who shall file them in his office. The  
" ballots drawn from the jury box shall be replaced by  
" the county clerk. Upon proof to the said judge, within

" thirty days after the filing of the inquisition of the  
 " jury, of payment to the OWNER OR OWNERS, or of  
 " depositing to THEIR credit in such bank as the judge  
 " shall direct of the amount of such appraisement, and of  
 " all costs and expenses attending it, including reasonable  
 " counsel fees (to be taxed and certified by said judge),  
 " the judge shall make an order particularly describing  
 " the land, and reciting the appraisement and the mode  
 " of making it; which *order* shall be recorded in the office  
 " of the clerk of the county in which the land is situated,  
 " in like manner as if the same were a deed of convey-  
 " ance; and the said corporation shall thereupon become  
 " possessed of such land during the continuance of the  
 " corporation, and may use the same for the purposes of  
 " said road."

The act of 1843, referred to in the opinion of the Court, simply applied to the Buffalo and Attica Railroad Company a provision of section seven of the act of 1836, also referred to in the opinion, which authorized the vice-chancellor of the eighth circuit to increase or lessen the amount of the appraisement.

The exact dates of the events in this case were as follows:

1836—Company chartered.

1841—Hatch's judgment.

1843—March, Amendment giving power to the vice-chancellor.

16 November, Condemnation proceedings begun.

1844—February 23. Final order and company took possession.

#### PROVISIONS OF CHAPTER 220 OF LAWS OF 1897 ARE:

" § 2. It shall be the duty of the forest preserve board  
 " and it is hereby authorized to acquire for the state, by  
 " purchase or otherwise, land, structures or waters or such  
 " portion thereof in the territory embraced in the Adiron-

"dack park, as defined and limited by the fisheries, game  
"and forest law, as it may deem advisable for the inter-  
"ests of the state.

"§ 3. The forest preserve board may enter on and take  
"possession of any land, structures and waters in the  
"territory embraced in the Adirondack park, the appro-  
"priation of which in its judgment shall be necessary for  
"the purposes specified in section two hundred and  
"ninety of the fisheries, game and forest law, and in  
"section seven of article seven of the constitution.

"§ 4. Upon the request of the forest preserve board an  
"accurate description of such lands so to be appropriated  
"shall be made by the state engineer and surveyor, or the  
"superintendent of the state land survey, and certified  
"by him to be correct, and such board or a majority  
"thereof shall indorse on such description a certificate  
"stating that the lands described therein have been ap-  
"propriated by the state for the purpose of making them  
"a part of the Adirondack park; and such description  
"and certificate shall be filed in the office of the Secre-  
"tary of state. The forest preserve board shall there-  
"upon serve on the *owner* of any real property so appro-  
"priated a notice of the filing and the date of filing of  
"such description and containing a general description of  
"the real property belonging to such owner which has  
"been so appropriated; and from the time of such serv-  
"ice, the entry upon and appropriation by the state of  
"the real property described in such notice for the uses  
"and purposes above specified shall be deemed complete,  
"AND THEREUPON SUCH PROPERTY SHALL BE DEEMED AND  
"BE THE PROPERTY OF THE STATE. Such notice shall be  
"conclusive evidence of an entry and appropriation by  
"the state. The forest preserve board may cause dupli-  
"cates of such notice with an affidavit of due service  
"thereof on such owner to be recorded in the books used

"for recording deeds in the office of the clerk of any county of this state where any of the property described therein may be situated, and the record of such notice and of such proof of service shall be evidence of the due service thereof."

"§ 5. Claims for the value of the property taken and for damages caused by any such appropriation may be adjusted by the forest preserve board if the amount thereof can be agreed upon with the owners of the land appropriated. The board may enter into an agreement with the owner of any land so taken and appropriated, for the value thereof, and for any damages resulting from such appropriation. Upon making such agreement the board shall deliver to the owner a certificate stating the amount due to him on account of such appropriation of his lands, and a duplicate of such certificate shall also be delivered to the comptroller. The amounts so fixed shall be paid by the treasurer upon the warrant of the comptroller.

"§ 6. If the forest preserve board is unable to agree with the owner for the value of property so taken or appropriated, or on the amount of damages resulting therefrom, *such owner*, within two years after the service upon him of the notice of appropriation as above specified, may present to the court of claims a claim FOR THE VALUE OF SUCH LAND *and for such damages*, and the court of claims shall have jurisdiction to hear and determine *such* claim and render judgment thereon. Upon filing in the office of the comptroller a certified copy of the final judgment of the court of claims, and a certificate of the attorney-general that no appeal from such judgment has been or will be taken by the state, or, if an appeal has been taken a certified copy of the final judgment of the appellate court, affirming in whole or in part the judgment of the court of claims, the comp-

"troller shall issue his warrant for the payment of the amount due the claimant by such judgment, with interest from the date of the judgment until the thirtieth day after the entry of such final judgment, and such amount shall be paid by the treasurer.

"§ 19. When a judgment for damages is rendered for the appropriation of any lands or waters for the purposes specified in this act, and *it appears that there is any lien or incumbrance upon the property so appropriated the amount of such lien shall be stated in the judgment and the comptroller may deposit the amount awarded the claimant in any bank in which monies belonging to the state may be deposited, to the account of such judgment, to be paid and distributed to the persons entitled to the same as directed by the judgment.*"

The Court of Appeals of New York thus decided three things:

*First*: That by the Buffalo and Attica charter the only person required to be a party to the proceeding is the "owner." *That is so here*—the only person here upon whom the appropriation notice is to be served is the "owner."

That the whole value of the land is to be paid to the "owner." *That is so here*. In *that* act the appraisers are to "assess the value of the land taken and the damages." In *this* act the "owner" is to make his claim "for the value of such land and for any damages." And this is made the more unmistakable by the 19th section, which provides that "if" it shall appear in proof that there is "any lien or incumbrance" the amount of such lien shall be stated in the judgment, and the comptroller "may" then deposit the money instead of paying it to the owner.

That upon so doing, in *that* act, the company is entitled

to possess and use the land. In *this act*, by the simple service upon the "owner," "*thereupon such property shall be deemed and be THE PROPERTY OF THE STATE.*"

And that it followed that the land was taken *free* from Hatch's judgment.

*Secondly* : That the land was *not* to be taken *subject to the lien of the judgment* was plain; the court saying: (p. 164.)

"It is claimed on the part of the appellant, that if the "judgment creditor is not an owner, the act makes no "provision for divesting his interest; and therefore the "effect of the order of condemnation is to vest in the com- "pany the right to the land, subject to the lien of the "judgment, in the same manner as if the company had "taken by deed from the owners. *But such a construc-*  
*"tion cannot be admitted.*

"The object of the act was to delegate to the company "the right of eminent domain, *to the extent necessary to enable it to effectually secure its roadway, etc.*

"There is no provision for assessing the value of the in- "terest of the owners, subject to the lien of judgments, "or for retaining any part of the value of the land as in- "demnity against such judgments. The whole value "must be paid to the owners, or deposited in bank, and "the owners are left to pay their own debts.

"The act then states what right the company shall ob- "tain by virtue of such payment to the owners, and the "order made thereupon. On the completion of the pro- "ceedings, the company is declared to be possessed of "the land during its corporate existence, with the right "to use the same for the purposes of the road.

"*This declaration excludes the implication, that, after the owners have been compensated, THE RIGHT OF ANY OTHER PERSON TO INTERFERE WITH THE POSSESSION OR USE OF THE LAND IS RESERVED, or that, in order to re-*

*"tain such use, the company is bound to satisfy liens of judgment creditors, after having been compelled to pay the whole value of the land to the owner."*

*So here:* The declaration that "*Thereupon such property SHALL BE DEEMED AND BE THE PROPERTY OF THE STATE,*" "excludes the implication that the right of any other person to interfere with the possession or use of the land is reserved," but shows that the object of the act was to use the right of eminent domain to the extent necessary to acquire the land *effectually for the use of the State*, and that that use excludes its use for a railroad is conclusively shown by the Constitution—"They shall not \* \* \* be taken by any corporation, public or private."

That this means railroads most of all is certain—because with the exception of telegraph companies *railroad corporations are the ONLY corporations of any consequence which, under existing laws, can be formed, so as to take lands within the limits of the Adirondack park*, and the prohibition against their being taken by any "public" corporation is plainly meant to prevent the legislature from organising cities and villages in the park.

*Thirdly:* That because the lien of the judgment was a *statutory* one the legislature had the constitutional power to do this.

But, 1, the lien claimed here is a *statutory* one, purely. Not only is it created solely by statute, but the proceeding has been changed by statute numberless times.

2. The legislature can take property which has been acquired by the right of eminent domain for a public use, and *that is what this lien is if it is anything*, and apply it to another public use, and that without compensation—the constitutional prohibition being only against the taking of "*private*" property without compensation.

Matter of City of Buffalo, 68 N. Y., 167, 171.

3. The power to alter or repeal is expressly reserved not only in the statute, but in the Constitution.

4. And again, suppose the legislature should *kill* the Adirondack Company, which it may do,

*People v. O'Brien, 111 N. Y., 1; what would become of the lien?*

In *Gunn v. Barry*, 15 Wall. 610, 611, the Court held that the lien of a judgment was a part of the obligation of the contract and could not be displaced by the legislature—but that does not affect the argument, because the lien claimed in this case can be *displaced* by the legislature.

### THIRDLY.

**That chapter two hundred and twenty of the laws of New York of 1897, does not command a procedure, which is due process of law, and is thus contrary to the fourteenth amendment, and is unconstitutional and void.**

#### I.

##### **The question is not here.**

The State holds the land by deed as well as by condemnation (R. 53, 54), and the title acquired by deed is sufficient to sustain the judgment.

## II.

**Chapter two hundred and twenty of the  
Laws of New York of one thousand eight  
hundred and ninety-seven (*ante* pp. 31-40)  
is constitutional and valid.**

- Beekman *v.* Saratoga and Schenectady Railroad Company, 3 Paige, 45, 72.  
 Varick *v.* Smith, 5 Paige, 136, 159.  
 Bloodgood *v.* Mohawk and Hudson Rail Road Company, 14 W. R. (Wendell) 51, 56; 18 W. R., 9, 13, 17.  
 Sweet *v.* Rechel, 159 U. S., 380, 407.  
 Davidson *v.* New Orleans, 96 U. S., 97, 104.  
 Castello *v.* McConnico, 168 U. S., 674, 683.  
 Holden *v.* Hardy, 169 U. S., 366, 384, 390.  
 Orient Insurance Co. *v.* Daggs, 172 U. S., 557, 563.

The contention is that the act does not give to the land-owner the right to be heard as to whether his land should be taken.

It is certain that at the time of the adoption of *all* constitutions—*no* act gave to the person whose property was to be taken any such right, and the practice was universal to the contrary—though nearly all acts took care that he should be heard on the question of the amount of compensation.

All the canals of New York were built under such acts, and the canal laws so stand to this day (*ante*, pp. 96 *et seq.*).

It has always been held that this is a legislative—not a judicial question. Matter of Poughkeepsie Bridge Co., 108 N. Y., 483, 490.

If the legislature transcends its power and takes land for

other than a public use there is simply no *taking*. The whole proceeding is void and the landowner has his day in court when any one asserts any right—or he can put him off the land by force.

And this has been often decided.

In *Boom Co. v. Patterson*, 98 U. S., 403, the Court speaking, by Mr. Justice Field said (p. 406):

"The position of the company on this head of jurisdiction is this: That the proceeding to take private property for public use is an exercise by the State of its sovereign right of eminent domain, and with its exercise the United States, a separate sovereignty, has no right to interfere by any of its departments. *This position is undoubtedly a sound one, so far as the act of appropriating the property is concerned.* The right of eminent domain, that is, the right to take private property for public uses, appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty. The clause found in the Constitution of the several States providing for just compensation for property taken is a mere limitation upon the exercise of the right. When the use is public, the necessity or expediency of appropriating any particular property is NOT A SUBJECT OF JUDICIAL COGNIZANCE. THE PROPERTY MAY BE APPROPRIATED BY AN ACT OF THE LEGISLATURE, or the power of appropriating it may be delegated to private corporations, to be exercised by them in the execution of works in which the public is interested. But notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been observed is a proper matter for judicial cognizance."

(P. 407.) "The point in issue was the compensation to be made to the owner of the land; in other words,

"the value of the property taken. No other question was open to contestation in the District Court. "Turner v. Halloran, 11 Minn., 253. The case would "have been in no essential particular different had the "State authorized the company by statute to appropriate "the PARTICULAR property in question, and the owners to "bring suit against the company in the courts of law for "its value."

Italics and capitals mine.

In *United States v. Jones*, 109 U. S., 513, the Court, again speaking by Mr. Justice Field, said (p. 518):

"There is, in this position, an assumption that the "ascertainment of the amount of compensation to be "made is an essential element of the power of appropri- "ation; but such is not the case. The power to take "private property for public uses, generally termed the "right of eminent domain, belongs to every independent "government. It is an incident of sovereignty, and, as "said in *Boom v. Patterson*, 98 U. S., 106, requires no "constitutional recognition. The provision found in the "Fifth Amendment to the Federal Constitution, and in "the Constitutions of the several States, for just compen- "sation for the property taken, is merely a limitation "upon the use of the power. It is no part of the power "itself, but a condition upon which the power may be "exercised. It is undoubtedly true that the power of "appropriating private property to public uses vested in "the general government—The right of eminent domain, "which Vattel defines to be the right of disposing, in case "of necessity and for the public safety, of all the wealth "of the country—cannot be transferred to a State any "more than its other sovereign attributes; and that, when "the use to which the property taken is applied is public, "the propriety or expediency of the appropriation can-

"not be called in question by any other authority. But  
 "there is no reason why the compensation to be made  
 "may not be ascertained by any appropriate tribunal  
 "capable of estimating the value of the property."

*Italics mine.*

In *Bauman v. Ross*, 167, the Court, speaking by Mr. Justice Gray, said (p. 574):

"In the Fifth Article of the earliest amendments to the  
 "Constitution of the United States, in the nature of a  
 "Bill of Rights, the inherent and necessary power of the  
 "government to appropriate private property to the public  
 "use is recognized, and the rights of private owners are  
 "secured by the declaration, 'nor shall private property  
 "'be taken for public use without just compensation.'"

And in *Backus v. Fort Street Union Depot Co.*, 169, U. S., 557, the Court, speaking by Mr. Justice Brewer, said (p. 568):

"Neither can it be said that there is any fundamental  
 "right secured by the Constitution of the United States  
 "to have the questions of compensation and necessity  
 "both passed upon by one and the same jury. In many  
 "States the question of necessity is never submitted to  
 "the jury which passes upon the question of compensa-  
 "tion. *It is either settled affirmatively by the legisla-*  
*ture, or left to the judgment of the corporation invested*  
*with the right to take property by condemnation. The*  
*the question of necessity is not one of a judicial*  
*character, but rather one for determination of the law-*  
*making branch of the government.* *Boon Company v.*  
*Patterson*, 98 U. S., 403, 406; *United States v. Jones*,  
 "109 U. S., 513; *Cherokee Nation v. Kansas Railway*  
*Company, supra.*"

(p. 569) "All that is essential is that in some appro-  
 "priate way, before some properly constituted tribunal,

"inquiry shall be made as to the amount of compensation, and when this has been provided there is that due process of law which is required by the Federal Constitution. *Bauman v. Ross*, 167 U. S., 548, 593.

Italics mine.

**The judgment should be affirmed.**

EDWARD WINSLOW PAIGE,  
Of Counsel.

## SUPREME COURT,

APPELLATE DIVISION—THIRD DEPARTMENT.  
 (27 App. Div., 326).

PARKER, P. J.; LANDON, HERRICK, MERWIN and PUTNAM, *Asst. Jsts.*

ALBANY, January, 1898.

<b>ADIRONDACK RAILWAY COMPANY,</b> Respondent,  <i>against</i>  <b>INDIAN RIVER COMPANY <i>et ors.</i></b> Appellants.	}
No. 34-10.	

EUGENE L. ASHLEY, S. & L. M. BROWN (EDWARD WINSLOW PAIGE, of Counsel), for Appellants.

LEWIS E. CARR, for Respondent.

The defendants being the owners of a large amount of wild lands in townships numbers 15 and 32, Totten and Crossfield's patent, so called, offered to sell the whole of Township number 15, and 18,000 acres in Township 32 to Forest Preserve Board; such offer and negotiations finally culminated in the Board of Forest Preserve, on the 6th of August, 1897, passing a resolution accepting such offer of the defendants, a portion of such resolution being as follows: "Resolved: That we accept the offer of Mr. Mc-Echron and the other owners of about 18,000 acres of Township 32, T. & C. and 24,000 acres of Township 15 of the same purchase, including in this total acreage 8,000 acres more or less of virgin forest land."

The defendants at that time were not the owners of all of Township 15, or of all of the 18,000 acres in Township 32, but proceeded to acquire, and did become the owners in fee, or placed themselves in position to transfer to the State the title in fee to all, of such lands, prior to the filing of the maps by the plaintiff as hereinafter set forth.

The plaintiff is a railroad corporation, maintaining and operating a line of railroad from Saratoga Springs, in the County of Saratoga, to the Village of North Creek, in the County of Warren, and has procured the right to extend the same to Long Lake, in the County of Hamilton. And for the purpose of extending its route to Long Lake it caused a map and profiles of its routes from North Creek to Long Lake to be made, duly certified by the president and engineer, and filed such map or maps on the 18th day of September, 1897, in the offices of the Clerks of the Counties of Warren, Essex and Hamilton, through or into which counties such route extended; and thereupon gave written notice to each of the defendants, with the exception of the defendant Jeremiah W. Finch, who it states at the time of the commencement of this proceeding it has not been able to serve, stating the time and place where such maps and profiles were filed, and the route adopted by it passing over lands occupied by them. A portion of the route so adopted passes over the tract of land known as Township 15, and over the land agreed to be sold by the defendants to the Board of Forest Preserve, and agreed by it to be purchased of the defendants.

The plaintiff commenced this action for an injunction restraining the defendants, and each of them, from conveying or suffering to be conveyed, either directly or indirectly, to the Forest Preserve Board or the State, during the pendency of this action, so much of that tract known as "Township 15" as is comprised within the route adopted by plaintiff over said township, except said

conveyance be expressly made and received subject to the right of way thereover of the plaintiff's own route, and that they be perpetually enjoined and restrained from conveying or suffering to be conveyed any portion of said township, except as subject to such right of way.

The plaintiff states in its complaint, "That said tract, " known as 'Township 15' as aforesaid, lies within the "limits of the Adirondack Park as defined and limited "in and by the Fisheries, Game and Forest Law, and "also within the limits of the Forest Preserve as defined "and limited in and by said law."

The plaintiff's claim is that if "a conveyance was made "without restriction it would be deprived of its rights to "acquire right of way by condemnation by virtue of the "provisions of Section 7, Article 7, of the Constitution," and as the lands adjacent to "said Township 15 on either "side thereof, said lands being also within the limits of "said Forest Preserve, have already been acquired and "are owned by the State, will absolutely deprive the plain- "tiff of its right to extend its road as aforesaid, and put "it to great and irreparable loss."

An injunction *pendente lite* was granted, and application was made to set it aside, which was denied, and a motion came on to be heard at a Special Term why such injunction should not be continued, and such injunction was continued, and from the order thereupon made this appeal is taken.

#### HERRICK, J.:

The Forest Preserve, the Adirondack Park, and what shall be embraced therein are defined in Chapter 395 of the Laws of 1895.

By Chapter 220 of the Laws of 1897, the Governor of the State of New York was authorized to appoint three persons to constitute a board known as the Forest Preserve Board.

Section 2 of that Act provides that it shall be the duty of such Board and it is thereby authorized, "To acquire for "the State, by purchase or otherwise, land structures, or "waters, or such portion thereof in the territory embraced "in the Adirondack Park, as defined and limited by the "Fisheries, Game and Forest Law, as may be deemed "advisable for the interest of the State."

The Act prescribes how lands may be condemned and appropriated, and a method for the owners obtaining damages for such appropriation in the event of the Forest Preserve Board being unable to agree with them as to the value of the property so taken or appropriated.

The Forest Preserve Board then, in making this agreement with the defendants for the purpose of its land, was in the exercise of the powers and in the performance of the duties conferred and imposed upon it by the statute referred to, and the injunction here, while in form one restraining the defendants only, it is evident must also operate to obstruct the Forest Preserve Board in the exercise of its powers and the performance of its duties, because if the defendants cannot convey title the Forest Preserve Board cannot receive it.

Undoubtedly an injunction may be granted in proper cases to prevent public officers, under color of official power or duty, from doing some illegal act affecting injuriously individual rights or property.

*People v. Canal Board*, 55 N. Y., 390.

*Flood v. Van Wormer*, 147 N. Y., 284.

But the illegality of the proposed act and the rights of the persons seeking the injunction should, however, both be made plainly to appear, and in determining an application for an injunction, which while in form against private persons only, yet, in effect, restrains or obstructs the action of public officers in the exercise of their powers and the discharge of their official duties, the same considera-

tion, to some extent at least, should be given to the rights of the State, the power and duties of the public officers, and as to whether their proposed action is illegal or not, as though the injunction applied for was to directly, instead of indirectly, restrain their action.

I shall therefore consider the rights of the State and the powers and duties of its officers and representatives, "The Forest Preserve Board," as well as those of the plaintiff and the defendants, in determining whether this injunction should have been granted.

The Forest Preserve Board is exercising in behalf of the State that power known as the right of eminent domain, which is ordinarily exercised by first attempting to agree with the owners of the property to be taken, upon the purchase price thereof, and if an agreement cannot be reached then taking it by compulsory process, an appropriate tribunal awarding the owners their damages for the same, which is the proceeding authorized by the statute here, under and pursuant to which the Forest Preserve Board and the defendant were acting in making the agreement above referred to.

The plaintiff says, however, that the right to exercise this power of eminent domain has been conferred upon it, and as part of the procedure in exercising that power it made maps and filed profiles of its proposed route, served notices upon the property owners, and has thereby acquired a lien upon the land which further procedure will ripen into an absolute right or title. And that the property having been appropriated for one public use, it cannot be taken for another without express authority of the Legislature.

It has been held that where a railroad corporation has made and filed a map and survey of the line of route it intends to adopt for the construction of its road, and has given the required notice to all persons affected thereby,

it has acquired a right to construct and operate its road upon said line, and by these proceedings has impressed upon the land a lien in favor of its rights to construct, which ripens into title through purchase or condemnation proceedings.

Rochester, H. & L. R.R. Co. v. N. Y. L. E. & W. R.R. Co., 110 N. Y., 128.  
S. R. T. Co. v. Mayor, 128 N. Y., 510.

It will be observed that both these cases, and I think all others of similar purport, are cases where the contention was between corporations claiming to exercise the right of eminent domain. In no case that I have seen has the contention arisen between a corporation and the State; it is a power that cannot be asserted against or in opposition to the State, that it cannot be so asserted or exercised, will be further discussed in another connection.

The plaintiff, claiming that it has thus acquired a right to the route in question, has, so to speak, appropriated it, further relies upon the rule that has been repeatedly stated by the Courts, that where land has been once appropriated for a public purpose it cannot be appropriated for another, unless such authority is conferred in express terms or by necessary implication.

Matter of B. & A. R.R. Co., 53 N. Y., 574.  
Matter of Rochester Water Commissioners, 66 N. Y., 413-18.

In the Matter of N. Y. C. & H. R. R.R. Co., 77 N. Y., 248-56.

Matter of B. H. T. & W. R.R. Co., 79 N. Y., 64-68.

The above cases, as well as numerous others to the same effect, are cases where the power was attempted to be exercised by public corporations, some of them municipal, and none of them were cases where the State itself had or was attempting to exercise its power.

It is a rule of construction, not a definition of the power itself, for it is conceded that "The Legislature may interfere with property held by a corporation for one public use, and apply it to another, and without compensation where no private interests are involved or invaded. The Legislature may delegate this power to public officers or to corporate bodies, municipal or other. It is a rule, however, that such delegation of power must be in express terms or must arise from a necessary implication."

Matter of City of Buffalo, 68 N. Y., 167.

The reason of the rule is stated to be, "Because it could not be intended that the State, having authorized one taking whereby the lands became impressed under authority of the sovereign with a public use, meant to nullify its own grant by authority to another corporation to take them again for another public use unless it so specifically decreed, it has been ruled that lands so held and impressed with a public trust were not embraced in words of general authority. Were the rule otherwise this evil would result: a corporation, number one, having the right of eminent domain, takes land from a similar corporation, number two, having the same right; number two thereupon proceeds again to condemn it for its own use, and number one retaliates, and so the absurd process goes on. It is clear that the Legislature never meant any such result, and hence, from any general grant containing in its terms no word of exception, there is necessarily excepted property already held upon a public trust by the authority and under the ward and control of the State."

Matter of Petition of N. Y., L. & W. R.R. Co., 99 N. Y., 12-23.

The rule only applies to cases where authority has been conferred upon others to exercise the power, and neither the rule nor the reason for it applies where the State

itself is exercising the right for its own immediate purposes.

The right or power of eminent domain is one inherent in, and incident to sovereignty. Like the police power it is one that cannot be alienated or parted with.

Black's Constitutional Law, 123 and Note.

Cooley's Constitutional Limitations, 524-525.

While the Legislature may authorize public or *quasi*-public corporations to exercise such power for the public benefit, it cannot do so to such an extent as to prevent the State itself from exercising it at any time, nor can it place such corporations upon an equality with the State in the exercise of such powers.

The Legislature cannot alienate or part with any of the inherent sovereign powers of the state, or by any act preclude it from exercising them untrammeled by any restraints except those voluntarily imposed by the Constitution itself. While refraining to act itself, the State may in the meantime authorize others to exercise the power, but such authorization or delegation is not a parting with any of its own power or authority in the premises, and when it chooses to exercise that power it is exclusive.

The authority to take and condemn lands for railroad purposes is subject to these limitations, and the plaintiff has no rights that it can assert in opposition to or in conflict with them.

Neither can the plaintiff avail itself of the principle that neither the State nor any corporation authorized to take property for a public purpose will take more than that purpose requires, and that where the use of property for one public purpose is not inconsistent with its use for another public purpose it may be used for both, and claim that the taking of this land for park purposes is not inconsistent with the use of a portion for railroad purposes.

To my mind, the operating of a railroad through a tract of land is not in harmony with its use as a forest park.

And the declaration of the State through its constitution and by legislative acts indicates very clearly, it seems to me, that the use and occupation of these lands within the Forest Preserve of the Adirondack Park is intended to be exclusive.

Section 7 of Article 7 of the Constitution reads as follows : "The lands of the State, now owned or hereafter acquired, "constituting the Forest Preserve, as now fixed by law, "shall be forever kept as wild forest lands. They shall "not be leased, sold or exchanged, *or be taken by any* "corporation, public or private, nor shall the timber "thereon be sold, removed or destroyed."

The plaintiff realizes the full force and strength of this provision, because its action is brought upon the theory that if the State once acquires possession of this land, that then under the Constitution it can acquire no right to operate its road through such land; and it seems to me a fair deduction from that, that if the State has no power to grant any such right, it should not take any land for the forest preserve subject to any such right.

If the granting by the State of any such right is inconsistent with its use as a forest preserve, then the acquiring of any land subject to such right would be inconsistent with the purpose for which it is acquired.

The Legislature has also spoken upon the subject, by Section 290 of Chapter 488 of the Laws of 1892. After describing what shall constitute the Adirondack Park, it provides as follows: "Such park shall be forever re- "served, maintained and cared for as ground open for the "free use of the people, for their health and pleasure and "as forest lands."

This coupled with that portion of the Constitution providing that such forest preserve "Shall be forever kept

as 'wild forest lands,' seems to me is entirely inconsistent  
 "with the use of the same or any portion thereof for  
 "railroad purposes."

There seems to be an incongruity between the use and preservation of lands as wild forest lands, and permitting railroads to traverse the same. But there is a further indication of the intent of the State. Section 291 of the same chapter confers power upon the Forestry Commission to purchase land situated within the boundaries of the Park, and provides that, "If such lands cannot be purchased on advantageous terms, unless subject to the leases or restrictions, or the right to remove soft wood timber, the contract may provide accordingly but not for any such right, lease or restriction after ten years from the date of the contract."

Under well known rules of statutory construction this is exclusive.

Providing for their taking lands subject to specific named burdens excludes, by implication, their right to take them subject to any other burdens.

*Matter of Albany Street*, 11 Wend., 148.

*Rathbone v. Wirth*, 6 App. Div., 289; approved in 150 N. Y., 475.

They could not therefore take it subject to the right of the plaintiff to operate its road upon or through it, if for no other reason than that it runs for more than ten years.

By the Forest Preserve Act, being Chapter 220 of the Laws of 1897, "The Forest Preserve Board is authorized to acquire for the State by purchase or otherwise, lands, structures or waters or such portion thereof, in the territory embraced in the Adirondack Park, as defined and limited by the Fisheries, Game and Forest Law, as it may deem advisable for the interests of the State" (Section 2).

Section 3 authorizes such Board to "enter on and take

" possession of any lands, structures and waters in the  
" territory embraced in the Adirondack Park, and other  
" sections provide a method whereby the owners of such  
" lands, structures or waters may obtain damages for the  
" taking of such lands, structures and waters if they can-  
" not agree with the Forest Preserve Board as to the  
" amount."

The language of this section I think is abundantly sufficient to authorize the appropriation of land condemned for railroad purposes, and of the structures erected by any railroad within such park.

In Chapter 220 there is also a proviso for the reservation of certain timber rights for a limited period of time, by the owners of the land appropriated, and under the rule of statutory construction I have before referred to, that excludes the reservation of any other right, so that it seems to me that taking into consideration the purpose for which these lands are to be used, the wording of the Constitution, and of these several acts of the Legislature that the use of these lands acquired or to be acquired in the Adirondack Park was to be exclusive in the State, and excludes the use of it or any portion of it for any other than park purposes.

In addition it may be said that the State authorities in prescribing the boundaries of the Park, which included within its lands, and authorizing the acquisition of any and all lands within its boundaries for park purposes, was public notice to the plaintiff and others that whatever rights final or inchoate they might acquire therein, they took subject to being divested of them by the State acquiring the land for its own purposes.

I think, therefore, that the plaintiff had no rights under the privilege granted to it to condemn land for railroad purposes and had acquired none that it could assert against the State.

That the using of lands for railroad purposes is inconsistent with devoting and preserving it for park purposes as wild forest lands.

That the State intended to take and hold the lands in the Adirondack Park free and clear of all incumbrances. And that the Forest Preserve Board in its agreement with the defendants to purchase lands was exercising the power of eminent domain for the State.

That any rights or privileges the plaintiff has under the power of eminent domain were taken subject and subordinate to the right of the State to exercise that power in its own immediate behalf.

But on the other hand, if the plaintiff is right in its contention, that by making and filing its maps and profiles and serving the required notices it acquired a lien upon the land, it needs no injunction to protect its rights, for any conveyance by the defendants must be subject to that lien, and as the State can only acquire from the defendants what the defendants can lawfully convey, it would take such lands subject to the plaintiff's lien or right to build its road.

I am of the opinion, therefore, that because in one aspect of the case an injunction is not needed to protect the plaintiff's claim of right, and in another aspect of the case it is a practical interference with, restraint upon, and obstruction to, the exercise by the State of its power of eminent domain, the injunction should be vacated and set aside.

Order reversed, and injunction vacated with \$10 costs and disbursements.

All concur. Parker, *P. J.*, Landon and Merwin, *JJ.*, upon ground last stated in the opinion.